

[Editorial note: Inland Northwest sporting and conservation groups appealed the US Forest Service's (USFS) 10-15 year plan for the Idaho Panhandle National Forests (IPNF) in 1987. The Forest Service responded with the federal government's "responsive statement".

The following document is the "reply to the USFS's responsive statement". It is based on my review of the USFS planning files in the basement of the Supervisor's Office in Coeur d'Alene (for which I am grateful to USFS personnel), and is a useful overview of issues in forest planning for the Idaho Panhandle.

In 1995, nearly 8 years into the Plan for the Idaho Panhandle, the USFS denied all of the issues and concerns raised by sportsmen and conservationists. The federal agency advised citizens to work through the individual timber sales. At the same time, the federal government systematically weakened or removed meaningful oversight of the federal timber program: Catch 22. –John Osborn]

REPLY
to the
RESPONSIVE STATEMENT
for the
IDAHO CONSERVATION LEAGUE ET AL. APPEAL (#2130)
of the
USFS PLAN FOR THE IDAHO PANHANDLE NATIONAL FORESTS

Issues (tier to the USFS responsive statement)

- (1) Clearcutting
- (2) Logging levels based on predetermined political targets, not the forest
- (3) Timber base is inflated
- (4) Deceiving the Public in the guise of "community stability"
- (5) Failing to address cumulative impacts
- (6) Ignoring "quality of life", excluding 350,000 people in Spokane County
- (7) Failing to protect fisheries and water quality
- (8) Mining Impacts are ignored
- (9) Monitoring program is inadequate
- (10) Old Growth forests will be logged

- (11) Plant pathogens and noxious weeds inadequately addressed
- (12) Congress won't allocated money to implement this Plan
- (13) Outdoor Recreation is not adequately addressed
- (14) U.S. Forest Service fails to work with other agencies, Tribes
- (15) Logging road network is huge and expanding
- (16) Timber production leaps from 280mmbf to 350mmbf
- (17) Ignoring problem soils, reforestation failures
- (18,19,20) Computer Model is flawed: doesn't model reality
- (21) Scenic vistas in peril
- (22) Rivers unprotected
- (23) Wildlife unprotected
- (24) Caribou, Grizzly Bear, Gray Wolf, and other threatened or endangered species

APPENDIX

Economic Analysis: Reply to Idaho Panhandle Responsive Statement

"Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork--even excellent paperwork--but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose."
40 C.F.R. Sec 1500.1(c)

This reply statement is in response to the Regional Forester's Responsive Statement of Mr. John Mumma, dated April 3, 1989, on the appeal of the Idaho Panhandle National Forests Land and Resource Land Management Plan (#2130).

The deadline for our reply was extended to Sept. 25, 1989, in a letter dated July 27, 1989, from George M. Leonard, Office of the Chief. This reply is in compliance with 36 C.F.R. Sect 211.18(d)(2) as pertaining to timeliness.

New information is provided in this reply to supplement the appellants Statement of Reasons (SOR) . The absence of a response should in no way be construed as abandoning issues raised in the SOR.

In general the Plan is subject to interpretations which afford the U.S. Forest Service (USFS) broad discretion for project level forest plan implementation. If anyone chooses to question a project level decision, the Forest Service can simply point back to the Forest Plan. If anyone questions the inadequacy of the Forest Plan, the Forest

Service points them to project level decisions. The result is a "shell game" with Public resources. This issue is now before the federal courts because of the severance of the roadless issue from the other issues raised in our appeal of the Panhandle Plan. The "shell game," however, is not limited to the roadless issue. Indeed, it pervades the entire planning process.

ISSUE 1. THE PLAN RELIES ON CLEARCUT LOGGING AND FAILS TO CONSIDER A VALUE-BASED ALTERNATIVES THAT RELY ON SELECTIVE FOREST MANAGEMENT.

The Plan fails to demonstrate that clearcut logging is the optimum timber harvest method for any of the proposed timber sales on the Idaho Panhandle National Forests (IPNF). Thus the Plan violates the National Forest Management Act (NFMA) and its implementing regulations. The Plan also fails to insure that clearcut logging is employed only where it can be carried out consistent with the protection of soils, watersheds, fish, wildlife, recreation, aesthetic resources, forest regeneration and habitat for species of concern.

Failing to develop alternatives that adequately address the high level of Public concern over clearcutting e.g. precluding it in areas of intermixed ownership), the USFS has violated 16 U.S.C. sec. 604(g)(1), 42 U.S.C. sec 4332 (2)(C) and (E), 36 C.F.R. sec 219.12, and 40 C.F.R. sec 1502.14(a).

A. SELECTIVE MANAGEMENT, NOT CLEARCUTTING, SHOULD BE THE MAJOR MEANS OF LOGGING IN THE NATIONAL FORESTS, INCLUDING THE IDAHO PANHANDLE NATIONAL FORESTS.

1. HISTORICAL BACKGROUND

From 1897 to 1974, selection management was the only legal method for harvesting timber in the National Forests. The USFS's reliance on clearcutting in the National Forest

System is a controversial Public issue. For example, Rep. Steve Symms spoke of the clearcutting problem when in 1976 the U.S. House of Representatives considered the National Forest Management Act: "If we want to pass (NFMA) . . . the Church guidelines are one of the things with which I think our friends from urban districts with environmental concerns maybe feel more comfortable." H.R. 15,069, 94th Cong. , 2d Sess. Sec 6 (f) (4) - (5) (19 7 6) as quoted in 6 4 Or. L. Rev. 1, 15 8 (1985). The Church guidelines are named for Sen. Frank Church, who in 1971 chaired Senate hearings on clearcutting [Subcomm. on Public Lands of the Senate Comm. on Interior and Insular Affairs, 92nd Cong., 2D Sess., Clearcutting on Federal Timberlands 3-4(Comm. Print 1972)]. These guidelines are important because they (1) form a legislative foundation for the NFMA as it relates to clearcutting, and (2) control harvesting practices in National Forests prior to USFS's release of final forest plans [64 Or. L. Rev. 1, 155-159 (1985)].

2. USFS RESPONSE FOR CLEARCUTTING ON THE IDAHO PANHANDLE IS INADEQUATE

The USFS's response (A-3) to our concerns is that Public comment did not point to the issue as one of major importance. To cite lack of Public concern about clearcutting shows a callous disregard of the history of forest planning, as well as Public laws and guidelines to "protect, restore, and enhance the environment." It is beyond challenge that clearcutting is harmful to certain wildlife. Clearcutting is also unsightly and can cause massive erosion when practiced on steep slopes. Selection management is well supported by scientific literature and professional experience.

B. LOGGING TECHNIQUES ON THE IDAHO PANHANDLE: THE LEGAL REQUIREMENTS

(1) NEPA

The National Environmental Policy Act (NEPA) and its implementing regulations require federal agencies to consider a broad range of alternatives when planning major federal actions that significantly affect the quality of the human environment. The Council on Environmental Quality considers the "alternatives" section of the EIS to be "the heart" of the document. 40 C.F.R. Sec. 1502.14 Agencies preparing an EIS must 11[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. Sec. 1502.14(a)

(2) NFMA

The National Forest Management Act (NFMA) requires the USFS to prepare forest plans in accordance with NEPA. 16 U.S.C. Sec. 1604(g)(1). Forest plans must include "a broad range of reasonable alternatives according to NEPA procedure." 36 C.F.R. Sec. 219.12(f). The reviewed alternatives must "reflect to the extent practicable the full range of major commodity and environmental resource uses and values that could be produced from the forest." 36 C.F.R. Sec. 219.12(f)(1). The alternatives considered in a forest plan EIS must also "provide different ways to address and respond to the major public issues, management concerns and resource opportunities identified during the planning process."

36 C.F.R. Sec. 219.12(f)(4). The development of alternatives is essential for informed Public participation and reasoned decision-making.

NFMA states that the agency shall provide for Public participation is the development, review, and revision of land management plans. 16 USC Sec. 1604 (d). The USFS is the lead agency in developing the land management plan for the three National Forests that comprise the administrative unit entitled "Idaho Panhandle National Forests." The agency has a responsibility to assist the Public in understanding and developing issues and alternatives.

C. VALUE-BASED ALTERNATIVES

(1) THE NEED AND THE OPPORTUNITY FOR A VALUE-BASED ALTERNATIVE

Given the growing concern about cost inefficiency in managing the National Forests, a cost efficient (valuebased) alternative should have been presented to the Public for review. The USFS did not include an alternative (or alternatives) based on timber values rather than volume, and therefore failed to respond to the issue of intensive timber management on good tree growing sites.

The alternatives in the Plan are based on timber volume, but rarely mention timber value. The USFS writes in documents outside of forest planning documents that a difference clearly exists between managing a forest for timber value and for timber volume:

Existing timber management plans are based on volume criteria. We need to be careful not to make the assumption that these volume criteria are necessarily the same as financial (or value) criteria. In order to meet volumes called for in the approved plans and anticipated timber sell targets, the volume criteria must take precedence over the value criteria. Such investments can contribute to inflation and prolong reallocation of resource to more productive uses.

[USDA Forest Service. Idaho Panhandle National Forests Timber Harvest Program Analysis and Evaluation, June 1981]

During the planning process timber corporate representatives raised concerns about the USFS proposals to change utilization standards in the Forest Plan. (See for example the USFS response dated Feb. 18, 1983, to the representative for Idaho Forest Industries, Inc. on this issue, IPNF Planning Document 3660. See also IPNF Planning Document 123 dated Sept. 28, 1982, which describes the possibility of reducing FORPLAN timber volumes if current utilization standards were used.) The concerns expressed by the timber industry help to underscore the important distinction between timber volumes and timber values--a distinction not addressed in the forest plan.

The alternative of growing quality wood in sustainable forests was recently reviewed by Mark Wigg, a consulting forester in Salem, Oregon. [Wigg, Mark and Anae Boulton.

"Quality Wood, Sustainable Forests: A New Agenda for Managed Forests in the Northwest" in Forest Watch Jan/Feb 1989]

Wigg notes that the Pacific Northwest grows some of the finest and most valuable wood in the world. The quality of the wood attracts buyers from every region of the world. He goes on to point out that "We can manage for quality wood over long rotations while preserving logging jobs, creating high-paying new jobs, generating millions of dollars in revenues, and protecting the forests we love." [p. 8.]

(2) THE LEGAL REQUIREMENTS FOR A VALUE-BASED ALTERNATIVE

The legal requirements for presenting alternatives in an EIS are (1) NEPA (42 U.S.C. Sec. 4332(2)(c)(iii)] requires " . . . a detailed statement . . . on--(iii) alternatives to the proposed action" and (2) 40 C.F.R. 1502.14 supplements this by stating that "agencies shall: (a) rigorously explore and objectively evaluate all reasonable alternatives." The NFMA regulations also address the requirement of considering alternatives in the development of forest plans. 36 C.F.R. 219.12(f) provides that "the interdisciplinary team shall formulate a broad range of reasonable alternatives according to NEPA procedures."

Because the USFS did not develop alternatives which emphasize timber value, the Plan for the three National Forests that comprise the IPNF does not "rigorously explore and evaluate all reasonable alternatives" and violates NEPA.

(3) LIKELY IMPACTS OF HIGH VOLUME BASED ALTERNATIVES NOT DISCLOSED TO THE PUBLIC.

In the USFS response labelled A-4, the agency does not respond to the issues of the effect of dumping large volumes of federal timber into the timber markets, depressing timber prices and receipts for other timberland owners: small woodlot owners, corporate timberland owners, Native American reservation lands, and State timberlands.

The USFS's rationale for the Forest Plan logging levels is "to help assure a continuing supply of timber products and to help support local industry in timber dependent communities. ROD. pg. 9.11 This rationale is based on the Forest Service's Exhibit 3: USDA Forest Service, A Report on Idaho's Timber Supply, Feb, 1987.

This timber supply analysis has been critically reviewed in conservationists' appeal of the Payette National Forest Plan, and is enclosed and labeled "Exhibit I". This exhibit documents that the Idaho Timber Supply Analysis is an inaccurate basis for justifying agency decision-making for the forest plans in Idaho.

While dumping higher volumes of Public timber on the markets may benefit large automated timber mills over the short run, dumping higher volumes of federal timber in the timber marketplace will lower timber prices in the Inland Northwest. This will be a negative incentive for other timberland owners to invest in forestry. Increased logging on one ownership will decrease logging on another ownership. Increasing timber volumes in

the marketplace will drop the price of timber- -reducing returns for all timberland owners. With lower prices for timber, small and large forest owners may lack the incentive to make the long term financial commitments for sustainable forestry necessary to compete with the federal government's subsidized timber from the National Forests. Rather than plan for the long-term economic health of their land and workers, private timberland owners may "liquidate" for short term economic gain. Reduced timber prices may induce a reduction in timber sale offerings on Idaho State school endowment lands, reducing funds for Public education.

The USFS justifies the Plan with the argument of "community stability," but does not disclose a scholarly analysis of impacts on "community stability," violating NEPA.

ISSUE 2. 280 MMBF ASQ IS A POLITICAL FIGURE, NOT BASED ON SCIENCE AND SCHOLARSHIP AND REPRESENTS "TOP-DOWN" NOT "BOTTOM-UP" PLANNING

The USFS used a timber target early during the planning process for the IPNF: a Resource Planning Act (RPA) goal for timber. The agency built the forest plan around this pre-selected timber target. The results of this decision as it was carried out on the IPNF are:

- (1) the USFS has not carried out the "bottom-up" planning approach envisioned by NFMA and the legislative history of NFMA;
- (2) the USFS has overestimated the amount of timber available on the IPNF; and
- (3) the USFS has failed to disclose new information developed between the draft and the final plan pertaining to impacts and resource trade-offs of carrying out the USFS's timber program under the Plan, in violation of NEPA.

The results of the "top-down" planning are many, and include the very real possibility of growing Public unacceptance of USFS decisions when the Public realizes that reductions in water quality, fish, elk, visual beauty, and other resources are based on politics and not scholarly and scientific analysis and decisions in keeping with the intent of Congress in passing NFMA.

Because of the importance of the timber target to the Plan, and to the IPNF, appellants wish to review for the USFS the history of the timber target in the USFS's planning process for the IPNF. This will be followed by a discussion of RPA, and the inaccurate use of RPA by the USFS in developing its plan for the IPNF.

A. HISTORY OF THE ASQ FOR THE IPNF

USFS planners and planning documents acknowledge that the timber target was based historically on RPA goals.

Documents in the forest planning files at USFS Supervisor's Office for the IPNF show the development of the timber targets for the Plan. This history of the IPNF forest plan is complicated, and can best be understood in the following periods:

(1) 1979-1983: Critical formative period, in which the USFS made substantive decisions for the IPNF's forest plan. This period ends when Reagan Administration official, John B. Crowell, Jr., orders the USFS to stop forest planning nationwide.

(2) 1983-1985: USFS reworks IPNF forest plan to comply with directives from the Reagan Administration. IPNF forest plan reviewed by the Washington, D.C. office of the USFS and the US Dept of Agriculture before being released to the Public in draft form for review and comment.

(3) 1985-1986: USFS reviews Public comment on the IPNF plan, and begins to develop the final plan. USFS officials document their inability to find timber to meet the USFS timber targets. Without Public disclosure or process, the agency decides on sacrificing other resources in order to maintain timber targets.

(4) 1986-1987: Reagan Administration shuts down forest planning in Idaho. The USFS proceeds with developing an analysis of overall timber supply in Idaho, and refuses to undertake a similar level of analysis for other multiple-use resources.

(5) Sept. 17, 1987: The USFS completes the forest plan for the IPNF with the signing of the Record of Decision.

(1) 1979-1983: CRITICAL FORMATIVE YEARS

The timber target established by RPA is the historic basis for the USFS's timber target that ultimately appears in the final forest plan. In approving the USFS's criteria for selecting a preferred alternative, the Regional Forester wrote to the IPNF Forest Supervisor on June 23, 1980, and directed that "(t)he preferred alternative should meet or exceed RPA program objectives assigned to the Forest by the Regional Forester or contained in the Regional Plan." [Planning document 3203]

The RPA goal for timber remained important to the USFS planning team for the IPNF in developing a preferred alternative. In 1982, for example, the planning team was building a preferred alternative around the RPA goal approved by the Regional Forester. [IPNF Planning Document 1777, March 23, 1982]. The goal of achieving 100 percent of the average RPA target for decades 1-5 in developing a preferred alternative is noted in a document discussing a possible preferred alternative. [IPNF Planning Document 1772 April 7, 1982]. On April 12, 1982, the USFS Planning Team was using the assigned RPA goal of 275 MMBF in shaping the Preferred Alternative FORPLAN Runs. [IPNF Planning Document 1771]. On May 4, 1982, the Forest Supervisor tentatively decided to use the RPA goal for the preferred alternative. (IPNF Planning Document 1767] Yet the Forest Supervisor wrote of concerns that this timber target could not be met, and consistent with goals for water quality, fish, elk, and other resources on the IPNF:

Many of you have expressed concern that 10-year harvest plans at current output levels cannot be met if all of the above constraints are met. I share your concern. Even if the FORPLAN analysis indicates the allocations and schedule of this iteration are feasible, we have a big job ahead in preparing an implementable Forest Plan.

In this same letter, the Forest Supervisor decided to proceed with a planning model that continued logging activities in already impacted watersheds. He also decided to open parts of entire elk sanctuaries to the computer modeling process in order to achieve the RPA goal.

The USFS was willing to make additional sacrifices of Public resources in order to meet its timber goals. For example, the USFS considered a preferred alternative which would road and log the Turner-Nelson roadless area (the third most valuable elk sanctuary on the IPNF) "in order to meet timber sale objectives in 1st decade. Higher number of suitable acres in Turner-Nelson." [IPNF Planning Document 1757]. Although elk hunters and wildlife enthusiasts were given the Slate Creek Area instead, this decision illustrates the importance of the timber target to the USFS in developing the forest plan-and the extent to which the USFS was willing to sacrifice Public resources in order to meet timber targets based on the RPA goal.

By 1982 the USFS recognized that it would be unable to meet its RPA goal because of water quality and road access constraints. [IPNF Planning Document 1757 of July 6, 1982, shows the timber target based on the RPA goal reduced from 275 MMBF to 260 MMBF for these two reasons].

During the period from 1979 to 1983, USFS officials began raising concerns that sufficient timber could not be found on the IPNF to meet the timber targets. "Ground-truthing" of timber volumes for the preferred alternative revealed less timber than anticipated. [See for example IPNF Planning Document 1762, June 23, 1982, in which the "fall down" was 15 MMBF per year for the first decade]. Individual ranger districts documented concerns about meeting timber targets because of environmental impacts. On the Avery Ranger District, officials expressed concern that the timber target was "unrealistically high for the first decade due to the number of drainages that exceed sediment levels that would be entered." [IPNF Planning Document 1763].

On the Bonners Ferry District, USFS officials raised concerns about the impacts of timber activities on watersheds. The importance of achieving the RPA goals for timber is evidenced in the response:

If we are going to meet our "RPA" goals, we will probably have to enter some of these "high concern" watersheds. It is, however, my contention that we can enter these drainages without creating significant adverse impacts if we are willing to take the necessary precautions. [IPNF Planning Document 071, March 2, 1982].

On the Priest Lake District, USFS officials provided the Forest Supervisor with overlays showing constraints on a future logging program resulting from past roading and logging on Public and private timberlands, and from non-timber resources (such as scenic beauty, critical wildlife habitats, water quality, and fisheries). The ranger concluded, "[A]s more and more restrictions are placed on the timber management function, it becomes more and more difficult to come up with sufficient viable sales to meet targeted sell volumes. [IPNF Planning Document 1673 January 20, 1982].

On January 19, 1983, the Assistant Secretary for Natural Resources and Environment, John B. Crowell, Jr., directed the Chief to change the standards of analysis for forest plans nationwide. IPNF forest planners estimated this would delay the release of the draft to the Public by 1.5-2 years. [See IPNF Planning Documents 2039, 2040, 2042].

(2) 1983-1985: COMPLYING WITH DIRECTIVES FROM THE REAGAN ADMINISTRATION

During this period the RPA goal of 275 MMBF is central to the development of the preferred alternative. In 1984 when USFS planners began selecting a preferred alternative for the IPNF under the Crowell directives, they again selected the RPA target of 275 MMBF. Planners selected the goal of 275 MMBF, and provided as a rationale that this was the "IPNF share of Regional target (RPA goal) . 11 [IPNF Planning Document 1740, April 9, appended documents. Note again the impact of this timber target on other resources listed in this document: reduced elk targets, reduced visual qualities in north Idaho, and the minimum level of fish and water quality protection to meet state standards. See also Planning Document 1739, a summary of a USFS planning team meeting on April 12, 1984, in which the decision was made to use the 275 MMBF figure in a FORPLAN run of the preferred alternative.]

"Ground-truthing" the RPA-driven preferred alternative began in June, 1984. [IPNF Planning Document 1733]. By July 3, the USFS had completed designating management areas for the proposed forest plan. The Forest Supervisor directed district rangers to meet on July 16, 1984. At this meeting the rangers would be assigned timber targets for their districts (disaggregated from the overall IPNF timber target).

[IPNF Planning Document 1668. This letter from the Forest Supervisor also generally outlines the procedure for "ground-truthing" each district.]

USFS personnel at the ranger districts continued to communicate their concerns to the supervisor's office about the timber targets. On the Wallace District, the Ranger wrote in Feb. 6, 1984, that "Ground-truthing" showed significant inaccuracies between FORPLAN and actual acres of mature and immature sawtimber. As the ranger noted, "Needless-to-say this drastically impacts the timber sell capability for the district." (IPNF Planning Document 065]. If the USFS was to continue logging 61 MMBF each year from the Wallace District, then immature sawtimber would have to comprise 36 MMBF of the total cut. Logging immature sawtimber would be directly related to (1) capital investment funds to build roads into roadless areas and (2) sufficient funds for timber sale

preparation--funding which would be unlikely. Instead of 61 MMBF, the district ranger recommended a maximum timber sell figure of 42 MMBF. This information was presented to the Forest supervisor, but neither he nor the planning staff had any suggestions on how to address these concerns in the forest plan. As the ranger noted, "Discussions with planning team members has not resulted in any quick, easy or perceptible way of accomplishing this. The bottom line is our being in a position to support the outcome and convey the true picture to the public." [IPNF Planning Document 065]

In July, 1984, USFS personnel on the Fernan Ranger District wrote to the Forest Supervisor and enumerated the factors which they believed would explain the significant differences between the FORPLAN runs and "ground-truthing." [IPNF Planning Document 1725, July 16, 1984].

The USFS at the Priest Lake Ranger District also documented significant differences between FORPLAN projected acres and "ground-truthed" acres available for timber harvest. On the Priest Lake District, watershed protection was the major factor which constrained the timber program. District personnel were "extremely uncomfortable" about the relationship of a timber program to capital investment monies for hard money roads: "Historically this district has received no hard money for roads so those 4910 acres called available in the ground truthing process are really questionable." [IPNF Planning Document 1727, July 16, 1984]

In the winter of 1985 the Forest Plan, based on RPA timber targets, was reviewed by the Washington office of the USFS, and officials in the U.S. Dept. of Agriculture. Only then did the USFS release the Plan for Public review in April, 1985, a draft forest plan built around the USFS decision to meet RPA timber targets.

(3) 1985-1986: RANGERS RECOMMEND 200 MMBF, THE USFS FORMULATES THE FINAL PLAN AT 280 MMBF (250 MMBF ASQ)

Significant changes between the draft forest plan and the final plan require that the USFS submit a supplemental draft to the Public for review and comment. The legal requirements of such supplemental documents were outlined in an OGC (Office of General Counsel, USDA) memorandum dated December 5, 1985. Based on NEPA (40 C.F.R. 1502.9(c)), the USFS would be required to develop a supplemental draft or final environmental impact statement if: "(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. 11 [IPNF Planning Document 2884] New information did emerge during this period and earlier periods that was never fully disclosed to the Public: the USFS could not find the timber to meet its RPA targets without (1) significant increases in budget; (2) serious environmental trade-offs for fish, wildlife, water quality, and outdoor recreation; and (3) reductions in the overall value of timber in order to meet these predetermined RPA timber targets. The concerns of USFS officials about meeting timber targets are apparent from the planning documents during this period.

When the USFS "ground-truthed" the ranger districts of the IPNF, the agency found that it would have to sacrifice more and more nontimber resources in order to maintain its overall timber target. For example, the Avery District had to turn to roadless areas and proposed wilderness areas as sources of additional timber volumes. [IPNF Planning Document 1706, January 23, 1986]. The USFS developed new roadless Management Area prescriptions to allow logging in roadless areas. The federal agency reassessed its earlier decisions about roading and logging activities in already heavily impacted watersheds (called "deferred drainages") trying to find timber volumes. [For example, see letter from Mr. Chuck Prausa to the Planning team dated January 24, 1986]. The USFS was willing to sacrifice elk, fish, water quality, scenic beauty, and outdoor recreation in order to maintain a timber target at any cost. During the final months of 1985 the USFS reviewed Public comments and made recommendations for developing the final plan. Regarding the IPNF timber target, USFS officials developed recommendations which included continuing efforts at "ground-truthing" based on final plan objectives in order "to establish district harvest levels and disaggregate final Forest Harvest levels." [IPNF Planning Document 2944, undated, these recommendations were submitted on December 17, 1985, as a preliminary draft].

On January 24, 1986, the IPNF Management Team agreed on an approach to develop a final forest plan. This included developing a "ground-truthed" alternative with a timber target of 325 MMBF. [IPNF Planning Document 2939. The procedure for "ground-truthing" is found in a January 31, 1986, letter from G. Alcock, entitled "Ground Truthing Process]. The initial targets for each district were: D-1 (Wallace) 69 MMBF; D-2 (Avery) 47 MMBF; D-3 (Fernan) 55 MMBF; D-4 (St. Maries) 34 MMBF; D-6 (Sandpoint) 38 MMBF; D-7 (Bonners) 42 MMBF; D-8 (Priest) 40 MMBF.

The results of the "ground-truthing" in February, 1986, by the districts revealed significant differences when comparing the FORPLAN run and "ground-truthed" data. For example, on D-1 (Wallace) the Aug. 1984 FORPLAN driven Programmed Sell was 58.6 MMBF and the Feb. 1986 "ground-truthing" was 30.1 MMBF (a reduction of 28.5 MMBF). When comparing the number of acres of regeneration harvest per year for the Wallace District, FORPLAN recognized 2599 acres; yet the August 1984 "ground-truthing" revealed 2168 acres; and the February 1986 "ground-truthing," only 1628 acres. As noted by the USFS:

From these two displays it is obvious that there are some major differences between the two efforts and the FORPLAN model. . . . This difference alone can lead to a significant reduction in harvest scheduled volumes. This difference in volume per acre harvested suggests some significant differences with FORPLAN yield tables.

Watershed and fisheries goals were the factors on all of the districts which constrained the timber targets the most. [IPNF Planning Document 1688, undated].

198.3 MMBF was the overall programmed sell for the IPNF identified by the ranger districts as a result of the "ground-truthing" in February, 1986. The Sandpoint Ranger District, for example, recommended a harvest level of 24 MMBF per year and would still carry environmental risk:

This level represents an 85% increase in harvest over 1984 target levels. This level would cut up to threshold limits of watershed, spatial constraints or Forest Plan recommended harvest percentage of mature and immature saw timber.

[IPNF Planning Document 1701]. [See also IPNF Planning Document 1709 for additional data, assessment, and conclusions from the Sandpoint Ranger District].

The Avery District recommended the figures of 22.68 MMBF for the first decade and 17.63 MMBF for the second decade, based on the USFS's "ground-truthing." IPNF Planning Document 1699 dated February 26, 1986. The timber volumes are actually given as 226.8 MMBF first decade and 176.3 MMBF second decade.] USFS officials then described the impacts on economics, fish, wildlife, Old Growth, etc. in trying to meet a timber goal on the Avery District of 47 MMBF.

On the Wallace District, meeting a timber target of 69 MMBF would result in reducing elk habitat potential from 54 percent under existing conditions down to 23 percent. Virtually all watersheds (97 percent) would be at threshold levels. Overcutting during the first decade would force a reduction in timber targets from 69 MMBF (first decade) to 13.7 MMBF (second decade). Capital Investment monies would be required in higher amounts to allow entry into stands with lower volumes/acre. [IPNF Planning Document 1687].

The USFS reaction to the results of its requested January 14, 1986, "ground-truthing" was two-fold. First, districts which placed greater restrictions on logging in order to protect water quality, fish, and elk were directed to bring their districts into conformity with the other districts. And second, another meeting was planned to increase the districts' timber harvest schedule "within acceptable limits." [IPNF Planning Document 1688, undated]. The USFS scheduled a meeting of district rangers and staff officers for April 7 and 8 to undertake these changes. [IPNF Planning Document 1689, dated March 25, 1986].

On April 7, 1986, representatives from the Districts met with USFS planners to discuss the results of the third "ground-truthing" effort. The districts were instructed to redo their maximum timber harvests using the following constraints:

- (1) 40 acre harvest units;
- (2) reduce visual quality as agreed upon at the January 24, 1986 meeting;
- (3) reconsider management areas, including logging in roadless areas where appropriate;

(4) maintain 5 percent Old Growth within Old Growth units, but allow for no future allocation of Old Growth;

(5) assess NDEF (non-declining even flow) through the second decade;

(6) ignore timber sale economics, unless sale would never sell anyway;

(7) for water quality, no thresholds would be established for nonfishery streams.

After the districts had complied with the above constraints, then the districts were to look at relaxing concerns for resources: (1) visuals, (2) roadless areas, (3) timber sale economics, (4) elk summer range and elk populations, (5) timber volumes/acre, and (6) watersheds and fisheries. [IPNF Planning Document 1711, dated April 8, 1986. In this memorandum, the Fernan Ranger District shows how trade-offs were done in order to achieve the desired result of achieving the timber targets in the forest plan.]

The possible trade-offs the USFS is willing to consider in order to reach its predetermined timber goals are found in several sources. The Avery District submitted the "Avery Yellow Paper." (IPNF Planning Document 1710, dated April 9, 1986]. This enumerates the major trade-offs and assumptions necessary to achieve higher timber targets, including the impacts on elk, roadless areas, visual qualities, and increased costs to the taxpayer.

The Bonners Ferry District "found" additional timber volume in grizzly bear habitat, uneconomic timber sales, and unregulated products (eg. pulp). officials cautioned against opening the Boulder and Katka Roadless Areas to roading and logging because of the high cost of capital investment outlays and risk of appeals. (IPNF Planning Document 1663].

Another source for understanding the trade-offs the USFS is willing to consider is the "Analysis of Potential Harvest Levels." This document lists by ranger district the results of the "ground-truthing" effort in February, 1986, and then with the April 7 adjustments. Data is presented in tabular form on the last page of this document, showing wide variation in timber volumes for each district (but without the resource trade-offs). The capital investment costs to carry out these various timber programs are also presented in tabular form. [IPNF Planning Document 1691, April 25, 1986].

On April 30 and again on May 2, USFS planners met to find a way to meet the RPA timber target of 275 MMBF. The USFS decided on a programmed sell of 280 MMBF/yr consisting of 250 MMBF/yr ASQ and 25-30 MMBF/yr of unregulated timber volume. (IPNF Planning Document 1690]. In this document, the USFS did not identify the consequences of these changes on resource outputs. The USFS would enter roadless areas, reduce water quality, reduce the visual resource, no longer look at elk numbers but elk habitat, and sell smaller diameter timber in order to maintain previous logging levels [see also IPNF Planning Document 2933 and 2932]. 490 MMBF during the first decade

would depend on \$22 million in capital investment funding. The USFS recommended that the ranger districts have the following timber targets:

D-1 (Wallace): 54 MMBF (48 MMBF ASQ)

D-2 (Avery): 45 MMBF (40 MMBF ASQ)

D-3 (Fernan): 42 MMBF (37 MMBF ASQ)

D-4 (St. Maries): 29 MMBF (26 MMBF ASQ)

D-6 (Sandpoint): 31 MMBF (28 MMBF)

D-7 (Bonners): 38 MMBF (34 MMBF ASQ)

D-8 (Priest): 41 MMBF (37 MMBF ASQ).

USFS planners met again on May 9, 1986, to review their proposals. A summary of the key issues were then compiled in a Regional Forester's Executive Summary dated June 4, which was used in a presentation to the Regional Forester on June 4, 1986. [IPNF Planning Document 2014].

(4) 1986-1987: THE REAGAN ADMINISTRATION SHUTS DOWN FOREST PLANNING IN IDAHO TO COMPLETE AN IDAHO TIMBER SUPPLY ANALYSIS.

On May 23, 1986, the Assistant Secretary of Agriculture, Peter C. Meyerst directed the USFS to undertake an analysis of timber supply in Idaho. This marked the second time that the Reagan Administration halted forest planning on the IPNF.

On August 21, 1986, Senator James McClure held field hearings in Coeur d'Alene on "community stability." The Forest Supervisor of the IPNF was invited to present testimony before Sen. McClure. [IPNF Planning Document 3934].

On March 19, 1987, the Regional Forester was briefed on the proposed final forest plan for the IPNF. The USFS maintained its recommended timber target of 250 MMBF (ASQ), but justified this number on the basis of historic sell rather than as an attempt to meet an RPA target.

(5) Sept. 17, 1987: THE REGIONAL FORESTER SIGNS THE RECORD OF DECISION, THEREBY RELEASING THE USFS IS FINAL PLAN TO THE PUBLIC.

On Sept. 17, 1987, the Regional Forester signed the Record of Decision for the IPNF forest plan, completing the USFS's effort to produce a final forest plan for the IPNF.

B. USFS USED "TOP-DOWN" AND NOT "BOTTOM-UP" PLANNING IN DETERMINING THE ASQ FOR THE IPNF, VIOLATING NFMA.

The USFS premised the planning process for the IPNF on achieving a timber sell level of 275 MMBF/yr based on a RPA goal (Forest and Rangeland Renewable Resources Planning Act, 16 U.S.C. 1601). With respect to timber resources the legislative history of the NFMA clearly indicates that Congress intended harvest levels to be determined by local planning--from science, scholarship, and public process (bottom-up planning) rather than from preconceived political targets (top-down planning).

The relationship between NFMA and RPA is perhaps best described by the NFMA implementing regulations:

The planning process is essentially an iterative process in that the information from the forest level flows up to the national level where in turn information in the RPA Program flows back to the forest level. 36 C.F.R. Sec 219.4(a) (1984).

The Resources Planning Act of 1974 does not impose top-down planning on the individual National Forests and should not have been used in this improper manner by the USFS as the skeleton upon which to build the IPNF plan. The primary purpose of the RPA is to improve funding to achieve "long- and short-term goals for national forest use." [S. 2296, 93 Cong., 1st Sess., 119 Cong. Rec. 26,797 (1973), reprinted in Senate Comm. on Agriculture, Nutrition, and Forestry, 96th Cong., 1st Sess, Compilation of the Forest and Rangeland Renewable Resources Act of 1974, at 20]. An RPA sponsor, Sen. Hubert Humphrey, noted that the Nixon Administration budget proposed for the USFS was shortsighted. In supporting RPA, Humphrey declared, "To correct this deplorable condition, we must reform the budget process. One-eyed bookkeepers must be gotten out of the National Forests." [119 Cong. Rec. 26,797 (1973) reprinted in RPA compilation at 20].

RPA was designed to give the USFS budgetary leverage against both the administration and Congress. As discussed by Sen. Humphrey,

Dr. McArdle [of the USFS] pointed out that the 1960 [Multiple Use Sustained Yield Act] was a clear success as a basic policy tool, but a major omission was the lack of a procedure to assure that the President and Congress could secure the timely enactment of program goals. Also missing was a vehicle for keeping before policy makers an agenda to realize the program's goals. This is [RPA's] purpose.

120 Cong. Rec. 26,554 (1974) reprinted in RPA compilation at 209.

The RPA requires the President to submit every five years a Statement of Policy to be used in framing budget requests for USFS activities and an explanation accompanying each budget that does not request funds necessary to achieve the objectives of the

Statement of Policy. The purpose of the RPA is to provide a standard for measuring the adequacy of alternative budget proposals to meet long-term goals.

Some confusion has arisen surrounding Sec. 8(a) of the RPA which mandates that the President, "subject to other actions of Congress, carry out programs already established by law in accordance with [the] Statement of Policy or any subsequent amendment or modification thereof approved by the Congress." 16 U.S.C. Sec 1606(a). Although uninterpreted by any court, the Dept. of Agriculture's Office of General Counsel (OGC) has issued two opinions construing this language.

The OGC issued its first opinion on April 8, 1982, and stated:

It is clear from RPA Sec. 8 that the Statement of Policy is no more than a mechanism by which Congress evaluates budget requests for Forest Service activities.

[Memorandum from Clarence W. Brizee, Ass't Gen. Counsel, Natural Resources Division, OGC, U.S. Dept of Agriculture, to R. Max Peterson, Chief, Forest Service].

The OGC issued its second opinion on April 29, 1982. In the second opinion the USFS had asked whether Section (8) required local forest plans to meet the forty-one million acre wilderness target of the 1980 revised Statement of Policy. The reply distinguished between a wilderness shortfall caused by changing national direction and a shortfall resulting from cumulative recommendations of individual forest plans. A change in national direction probably would require Congressional approval, while cumulative local planning decisions would require at most only that the agency inform Congress of the shortfall.

[T]he Forest Supervisor is not prohibited from recommending, nor is the Regional Forester obligated to disapprove, an alternative which recommends less acreage for wilderness designation than the assigned share of the wilderness target [36 C.F.R. Sec. 219.5(i)]. Criteria for choice of an alternative for adoption as a forest plan may be based on numerous legal, economic, ecological, technical, and public issue considerations in addition to national and regional RPA policies and objectives [36 C.F.R. Sec. 219.5(c)]. If a forest's assigned share of RPA wilderness targets cannot be met in accordance with other considerations and objectives considered in the forest planning process, readjustment of the assigned share of the target is provided for (36 C.F.R. Sec. 219.4(b)(3))."

Memorandum from Clarence W. Brizee, Asst Gen. Counsel, National Resources Division, OGC, USDA, to Thomas E. Hamilton, Director, Resources Program and Assessment, Forest Service, USDA.

As with wilderness targets, forest plans are not required to meet RPA timber targets. Congress did not intend for forest planners to build forest plans around preconceived

timber targets. Yet this is precisely what the USFS did on the Idaho Panhandle National Forests.

ISSUE 3. THE PLAN FAILS TO ADEQUATELY CONSIDER ECONOMIC EFFICIENCY OF LANDS, BELOW COST TIMBER SALES, AND ENVIRONMENTAL COSTS IN THE DETERMINATION OF SUITABLE LANDS.

Contention B-1 The Forest Service justifies adding 223,360 acres to the timber base where direct costs exceed direct benefits by claiming other resources, such as wildlife and visual quality, benefit from this decision. (ROD, p. 12 and USFS response p. 16). The agency, however, fails to disclose what these benefits are, and whether they could be met by other method (e.g., not logging, prescription burning, etc). The result of the agency's approach is that the Forest Service places itself in an untenable position of logging for scenic beauty, logging for wildlife, and logging for clean water. In the absence of timber sales, these expenditures for wildlife and visual quality would not be needed. The reality is that the Forest Service decided to log and build logging roads, damage the environment, and lose money--and is now trying to justify this decision under the rubric of "Multiple-Use."

See also Exhibit 1. Randall O'Toole: Reply to Idaho Panhandle Responsive Statement. June 20, 1989

ISSUE 4. THE PLAN ATTEMPTS TO JUSTIFY COST INEFFICIENCY AND ENVIRONMENTAL DAMAGE BY USING "COMMUNITY STABILITY."

The timber economy in the Northwest is in a period of accelerated transition resulting from factors beyond the control of the USFS. These factors include corporate overcutting, automation, cuts in workers' wages and benefits, raw log exports and international economic pressures.

The Forest Service fails to:

- (1) adequately define "community stability,"
- (2) show how its forest plan for the Idaho Panhandle stabilizes economies and social systems in the midst of historic transition,
- (3) whether this is appropriate, and
- (4) whether there is any basis in law to do so.

ISSUE 5. THE PLAN FAILS TO ADDRESS CUMULATIVE IMPACTS.

The USFS's position on cumulative impacts is as follows: "Further site specific cumulative effects analysis will be performed during the Forest Plan implementation." If

the USFS does not analyze the historic and anticipated impacts of multiple site specific activities, then the agency's position is deficient and in violation of NEPA and NFMA.

The SOR summarized several court rulings germane to the issue of cumulative impacts. A recent ruling, *Save the Yaak Comm. v. Block*, 840 F.2d 714 (9th Cir. 1988) reaffirms that the Forest Service must address the issue of cumulative impacts. The Ninth Circuit Court of Appeals writes in its decision,

Both connected actions and unrelated, but reasonably foreseeable, future actions may result in cumulative impacts. . . . The cumulative impact of [road-building and logging] raises material issues of fact concerning the project's effect upon the human environment.

The USFS has been willing to act on the problem of cumulative impacts in checkerboard lands. For example on May 1, 1987, the Supervisor of the Lolo National Forest withdrew two proposed USFS timber sales and directed the ranger not to plan any additional timber sales within the hydrologic boundaries of three streams for ten years. This decision argues (1) that the USFS should withdraw timber sales in mixed ownership watersheds such as occur on the St. Joe, and (2) that sediment models can grossly underestimate actual effects.

What is especially frustrating for the appellants is that the USFS on the IPNF is clearly aware of problems related to mixed ownership generally and of the St. Joe checkerboard lands specifically; yet the agency has done nothing to remedy a serious and worsening environmental problem. This is readily apparent upon reviewing the Planning Documents.

On June 19, 1979, the Avery District Ranger wrote to the Forest Supervisor requesting that the agency address the checkerboard land ownership problems in the forest plan. Ranger Roy Brogden wrote:

Several events over the last few days have suggested an item of concern that should be covered by the Forest planning process. In areas of intermingled ownership we regularly face situations where the actions of the other landowner(s) have had serious impacts on resources.

The USFS ranger noted that the only two options available for the USFS were to mitigate (by reducing the logging and roading on National Forest lands) or not to mitigate.

The ranger further stated:

I would like to see land use planning address this issue. I do not believe we can consider adjacent ownerships in the elk coordinating guideline, allowable clearcut acreage calculations for watershed, etc. without considering them in calculating allowable harvest.

[IPNF Planning Document 0882].

The Forest Supervisor responded to the Ranger by recommending that he relay concerns about mixed ownerships to the USFS planning team. The Forest Supervisor concluded:

Paragraph "g" of Section 219.8 of the proposed section 6 NFMA regulations addresses your concerns. We need to work with state and other Federal agencies, as well as adjoining landowners in coordination of planning efforts.

[IPNF Planning Document 4383, June 27, 1979].

Burlington Northern Corporation, the owner of the checkerboard forests on the St. Joe, submitted considerable comment about intermingled ownerships and the forest planning process. On February 1, 1980, the corporation noted, "Development of the Forest Plan without the consideration of adjacent management objectives could negate the effectiveness of the management plan." [IPNF Planning Document 4382] In 1980 Burlington Northern Corporation reviewed the draft forest plan and DEIS for the Lolo National Forest in Montana, and submitted its analysis to the USFS at the IPNF. [IPNF Planning Document 3698] In 1982, the corporation submitted to the IPNF Forest supervisor its comments on the revised draft forest plan for the Lolo National Forest. [IPNF Planning Document 3675, July 30, 1982].

The USFS continued to be aware of the potential problems in the checkerboard land, as evidenced by USFS efforts to exchange lands with Burlington Northern Corporation. In a letter dated November 10, 1980, from the USFS to Idaho Dept. of Fish and Game, the Forest Supervisor states that the Regional Forester directed that all land exchanges cease until completion of the forest plans. Yet this same letter raises concerns about the potential impacts to the checkerboard forests of the St. Joe. As pertaining to cumulative impacts and land adjustment to avoid such impacts, the Supervisor said,

"Our Forest Plan, in conformance with Regional direction, will consider and will provide overall direction and policies regarding lands adjustment throughout the Forest. Our current and long-standing direction in the St. Joe is to consolidate ownership with Burlington Northern, but we haven't been able to work out a satisfactory exchange package with them." [IPNF Planning Document 0895].

USFS planners decided on November 20, 1980, not to undertake landownership adjustment planning as a part of FORPLAN. USFS officials justified their decision on grounds of additional cost and time. Yet planners also intended to develop landownership alternatives as a part of the Forest Plan. [IPNF Planning Document 0887. A similar intent by planners to develop alternatives relating to Burlington Northern Corporation is described in Document 0886, November 30, 1981, and Document 3682 November 16, 1982.]

USFS officials were hampered by corporate unwillingness or inability to provide information necessary for forest planning. For example, in 1981, Mr. Bob Boeh representing Burlington Northern Corporation said that his company was no longer

interested in pursuing a land exchange on the Palouse. Mr. Boeh also declined to provide the USFS a copy of Burlington Northern's land management plan and information on timber volumes in the St. Joe checkerboard forests. [IPNF Planning Document 0892].

USFS officials have also been hampered in planning individual activities which tier back to the Forest Plan, which fails to address the problem of cumulative impacts. In assessing impacts on elk for the Kelley-Blue Grouse Environmental Assessment, USFS personnel wrote:

Burlington Northern activities are not taken into effect because they have not yet planned their activities out to that year. . . . Some gates which were treated as locked for this elk run could possibly be open if Burlington Northern were to conduct logging operations, but at this time it is not known where Burlington Northern will be logging so all roads which are not designated as "open" in the Area Closure were treated as closed. (At 3-4, Appendix C).

Discussion with USFS planners confirms that these are not isolated instances of problems obtaining information from timber corporations for planning purposes. Yet the USFS responds to the concerns of appellants by citing the overall Standard for mixed ownership:

Where other ownership comprises 25 percent or more of a major drainage, coordination between owners is encouraged through mutual participation. [Response, p. 24].

Such a standard is meaningless if mutual participation does not occur, as was the case in developing the Forest Plan.

In 1982 the Avery District Ranger again wrote the Forest Supervisor and asked that the problem of mixed ownership be dealt with in formulating a preferred alternative.

Once again I would like to point out that in checkerboard areas any realistic plan will have to make reductions in predicted timber yields or allow for increased resource impacts.

[IPNF Planning Document 1775, March 30, 1982]. The following day representatives from the Avery District expressed concerns to USFS planners about visuals and water quality:

On mixed ownership area and checkerboard-forget visuals (or downplay). Try to resolve watershed policy in checkerboard. [IPNF Planning Document 1605, March 31, 1982].

The Regional Forester noted deficiencies in the draft forest plan for the IPNF, and communicated his concerns in a letter dated March 8, 1983. He wrote,

It does not appear the landownership planning criteria for the checkerboard ownership areas is aligned with that contained in FSM 5500, Region 1 Supplement No. 5. . . . [T]he Forest Plan should be changed to be in alignment with the Regional criteria. [IPNF Planning Document 0861].

In developing the final forest plan the USFS continued to have input from the Avery District that the checkerboard forests posed major problems. During "ground-truthing" in February, 1986, this was noted by USFS planning staff. "Changes on the Avery District to MA-10, wilderness proposals and MA6 and harvest on adjacent private lands (BN liquidation) had a significant affect on their ability to schedule timber harvest." [IPNF Planning Document 1696, dated March 19, 1989].

On April 8, USFS planners directed the Avery District personnel (and other districts) to find more timber volume for the final forest plan. This resulted in a document entitled "Avery 'Yellow' Paper: Ground Truthing Phase III." The "Yellow Paper" lists the effects of the Burlington Northern Corp. liquidation in the St. Joe checkerboard forests for USFS planners:

Due to accelerated harvesting, USFS is blocked out of checkerboard ownership.

Problems we foresee:

- a. fisheries (smolt potential) will be reduced below the acceptable 80% level by BN harvest alone.
- b. insufficient hiding/thermal cover for elk will exist on BN lands; FS will have to provide this habitat requirement.
- c. harvesting on BN lands will not meet visual quality objectives for the area
- d. difficulty scheduling harvest units so they will not exceed 40 acre openings due to numerous openings created by BN
- e. Forest Service ground will have to provide Old-growth component [IPNF Planning Document 1710, April 9, 1986].

These concerns were ignored by the USFS, and planners assigned the Avery District a high timber target.

Additional problems relating to mixed ownership are transportation costs and fire. Planning document 0837, dated January 1981, describe the increased costs facing the USFS because of mixed ownership patterns. Burlington Northern Corporation expressed concerns about transportation costs in its comments submitted to the USFS on Feb. 1, 1980. [IPNF Planning Document 4382]. Concern about fire related-problems resulting from inadequate slash disposal is the subject of a memorandum from the Avery District to the Supervisor's Office. [letter dated June 10, 1987] The USFS Plan does not assess the issue of mixed ownership as it relates to either fire or transportation problems.

ISSUE 6. THE PLAN IGNORES "QUALITY OF LIFE" WHILE ARBITRARILY EXCLUDING THE 350,000 PEOPLE OF SPOKANE COUNTY AND FAILING

TO RECOGNIZE THE INTERDEPENDENCE OF NORTH IDAHO AND EASTERN WASHINGTON.

A. Some of the Plan's alternatives were recreation-based and Spokane County residents are the major recreation users of the forest.

The Plan's decision to cleave off eastern Washington from the impact zone is arbitrary and capricious. The USFS argues that IPNF is not important to the larger Spokane economy. Clearly this is inaccurate. Lakes and watersheds are central to Spokane as a community. A significant number of Spokane residents invest in north Idaho. Many men and women who hunt and fish purchase licenses in Idaho, contributing to Idaho's fish and wildlife economic sectors. The economies and social fabric of north Idaho and eastern Washington are inextricably intertwined.

B. The socio-economic interconnectedness of north Idaho with eastern Washington cannot be measured in the traditional "input-output" economic model of the US Forest Service. This model fails to assess "quality of life" as an economic force, and many people live in Spokane and elsewhere because of the high quality of living.

ISSUE 7. THE PLAN FAILS TO PROTECT WATER QUALITY AND FISHERIES.

The NFMA water quality provisions, which are historically subsequent to and more specific than section 208 of the Clean Water Act of 1972, plainly supplement the Clean Water Act requirements for lands within the National Forest System. The Act prohibits timber harvesting unless the USFS can ensure that "soil, slope, or other watershed conditions will not be irreversibly damaged." [16 U.S.C. Sec 1604(g)(3)(E)(i)(1982)].

More specifically, the agency must ensure that "protection is provided for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment, where harvests are likely to seriously and adversely affect water conditions or fish habitat." [16 U.S.C. Sec 1604 (g) (3) (E) (iii) (1982)].

Furthermore, clearcutting is allowed only where "such cuts are carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, aesthetic resources." 16 U.S.C. Sec 1604 (g) (3) (F) (v) (1982).

Protection of water quality and beneficial uses is a major theme in the history of the National Forest System, and is of paramount importance in north Idaho. The Public watersheds of the Idaho Panhandle National Forests are essential to the long term health of lakes and streams in north Idaho. Protecting municipal and domestic drinking water, nationally significant fisheries, and the lakes of north Idaho are a shared responsibility of the US Forest Service. A long history of water quality devastation in this nation has led to laws and implementing regulations that guide Public land managers. The length of this

section of the Reply reflects the importance of clean water and fish in north Idaho--and the failure of the USFS to protect these resources under its Plan for the Idaho Panhandle.

Contention A. THE USFS HAS NOT COMPLETED SOIL INVENTORIES, INCLUDING IDENTIFYING HIGH HAZARD SOILS AND SLOPES.

Recognizing that the NFMA "expresses strong concern about protecting streams and lakes," (Final Report of the Committee of Scientists, 44 Fed. Reg. at 26,626] the Committee of Scientists addressed water quality at several places in the NFMA regulations. This includes regulations that require planners to compile information necessary to identify and evaluate potentially hazardous watershed conditions, such as unstable soils. [36 C.F.R. Sec 219.23(e) (1984)].

The Forest Service claims, in "Contention All (Response p. 29), that Land System inventories were used in the delineation of capability areas and in the determination of suitable timberlands. The Forest Service, however, just listed the criteria used in defining capability areas. For landslides the only category used is "erodibility" with two sub-categories, "low to moderate and high". Lands which the Forest Service terms "suitable timberland" have no mention of being withdrawn from this category because of the possibility of landslides occurring.

The Forest Service fails to disclose to the Public that landslides can and do occur on the Idaho Panhandle as a result of the Forest Service. An example is the landslide resulting from a logging road failure at Bluff Creek on the Avery Ranger District in the spring of 1988, nearly resulting in the loss of human life.

In Northwest Indian Cemetery Protective Assoc. v. Peterson 795 F.2d 688 (1986), the 9th Circuit Court of Appeals held the Forest Service's Environmental Impact Statement (EIS) was inadequate because the statement did not address (1) increased sedimentation and (2) cumulative sedimentation effects on water quality arising from proposed timberland construction projects.

In order not to run afoul of this case, the Plan should disclose any substantial risk of sedimentation caused by road-caused landslides such as have occurred on Bluff Creek in the Avery District. The Plan does not do so. The 9th Circuit Court said of landslides in Peterson:

The EISs do not, however, address increased sedimentation contributed by road-caused landslides, because of the difficulty inherent in predicting such slope failures. Thus, the potential risks to water quality stemming from the uncertainty in predicting landslides are ignored in the 'discussion of sedimentation risks. These risks must be revealed if they appear substantial. 795 F.2d at 696.

As in Peterson, the FEIS of the Plan is inadequate because it does not address the distinct possibility of increased sedimentation and cumulative sedimentation effects on water quality in the Idaho Panhandle arising from landslides. Moreover, the Plan fails to

disclose to the Public information necessary to identify and evaluate potentially hazardous watershed conditions, such as unstable soils.

Contention B. THE PLAN'S WATERSHED ANALYSIS IS INADEQUATE

Contention B-1. Agency Discretion Threatens Clean Water and Fish

The Plan gives the USFS too much discretion in whether to protect water and fishery resources. Unless addressed in the Plan, the agency has no incentive to adequately plan for watershed protection at any time, including the project level.

If the USFS believes that stream surveys and sediment load measurements are important components of the watershed analysis procedure (as the agency's asserts on page 30 of the response), then the agency should remove the qualifying "if available" status and make them a watershed analysis requirement.

The Idaho Panhandle National Forests cover 2.5 million acres. Geologies, slopes, and vegetative types are highly variable. Using information of similar geology in the watershed analysis is an unacceptable substitute for obtaining detailed site-specific watershed information. If the agency's cursory approach to watershed analysis was acceptable, then it would logically follow that analysis of one stream representing each geology would be sufficient to manage the entire forest. This is clearly not the case. Indeed, each drainage is geologically, hydrologically, and vegetatively unique and deserves a complete site-specific analysis to insure watershed protection.

The agency conveniently picks and chooses what it wants to do when it comes to watershed analysis. As a result, the Public is denied critical information on potential watershed damage and costs.

Contention B-2. The Plan Does Not Account For Cumulative Impacts.

The Forest Service's exhibit 7 (letter from Mr. Ed Javorka to Potlatch Corporation dated Dec 2, 1980) is used as evidence that the Forest Service did address the issue of cumulative impacts to water quality. The agency does not acknowledge a reply, or how information obtained was used to assess cumulative impacts of multiple activities occurring in the same watershed and forestwide, simultaneously and over time. This information is not disclosed to the Public, and the Public did not participate in a forest planning process that addressed the issue of cumulative impacts, in violation of NFMA and NEPA.

The Forest Service argues that it will address cumulative effects on a site specific level. But this approach defeats the whole purpose of developing a plan which anticipates cumulative effects of site specific activities on the area covered by the Plan: stream watersheds and river basins. The Plan does not look at the impact of multiple activities (Forest Service and others) occurring simultaneously and over time in a river basin. The

USFS cannot adequately assess cumulative impacts at the site-specific level, and should assess cumulative impacts at the forest planning level.

The Plan should clearly spell out the agency's mechanism for mandating the cooperation between State, private, and federal agencies. Until then, "considering these interrelationships" is not consistent with Forest Service Manual (FSM) requirements that they "must" and "will" coordinate and cooperate with landowners in areas of mixed ownership to insure protection of downstream beneficial uses in drainage basins.

An adequate cumulative effects analysis procedure for drainage basins should be applied to Idaho State Nutrient Management Act requirements for developing basin-wide nutrient management plans.

If the USFS is unable to meet its historic commitment to watershed protection for north Idaho's rivers and lakes that are based on National Forests, then the agency should clearly acknowledge this. Since the USFS has already so badly damaged north Idaho's watersheds, the agency cannot continue to do "business as usual" and meet its Public trust responsibilities for maintaining and enhancing water quality. The agency must address cumulative effects.

Contention B-3. Watershed Analysis Was Not Used In Scheduling Activities And Fails To Consider Peak Flows.

The USFS did not respond to appellants contention (#3 on the top of page 4) that the watershed analysis procedure does not address the need to schedule forest activities to prevent fishery/water quality impacts, as the agency's claim in the Final Environmental Impact Statement (FEIS) Page VI-31.

Does the agency really schedule road-building and logging activities depending on the watershed analysis (flawed as it is), as the agency asserts? If so, then where does the USFS disclose this planning mechanism to the Public?

Peak flows usually occur with spring run-off or unusual storm events ("rain on snow" events). Clearcutting increases peak water flows and sediment yields. Under the Plan for the IPNF, most of future logging will be clearcutting. Huge areas of north Idaho's forests have already been clearcut.

Peak flows probably account for the greatest amount of damage to watersheds. Yet such events often occur when it is difficult to have agency personnel in the field to monitor this damage. The Public would reasonably conclude, therefore, that the agency should clearly address the problem of peak flows. The Forest Service, however, fails to do this.

The Forest Service responded to our concerns by stating that "peak flows are considered important." Yet the agency averaged these "peaks" into "daily" and "annual" sediment

and water yields. The result is that the Forest Service fails to consider peak flow--the major contributor to watershed damage--at the forest planning level.

The agency uses vague language to suggest that it will consider peak flows at the project level: "At the Forest Planning level average annual yields are used, detailed analysis which includes consideration of individual peak flows is more useful at project level evaluations." (USFS Response, at 30). Once again, the USFS plays a "shell game" with Public resources: the Public never knows where or when this federal agency does a watershed analysis which considers peak flows. The Plan should specifically outline the need/mechanism to address these variables at the project level.

If the Forest Service does address peak flows at the project level but not in the Plan, then it fails to address the problem of cumulative effects, as described above.

Contention B-4. The USFS Does Not Assess The Impacts On North Idaho's Lakes.

The Idaho Panhandle National Forests comprise most of the watershed for many of north Idaho lakes. The Plan is the legal document to which tiers all USFS decisions. Lakes are a major issue. Hundreds of millions, perhaps billions of dollars in property values depend on these lakes. These lakes are a major part of the socio-economic life of the Inland Northwest. The USFS Plan for the Idaho Panhandle virtually ignores the lakes.

The USFS should disclose the portion of damage it does to the region's lakes. The agency should not wait for an invitation from state government. Protection of the lakes is a shared, cumulative effects responsibility.

The USFS attempts to dilute its responsibility for the acceleration of lake aging process: cultural eutrophication. The Forest Service declares that the lakes must be a "joint, cooperative effort ... beyond the scope of the Forest Plan alone."

The agency should be willing and able to outline for the relative state agencies, through the planning process, how much sediment/nutrients will be deposited in the lakes from agency activities, aside from lawn fertilizer and septic tank contributions.

What assurance does the Forest Service give the Public that the agency will not damage our lakes under this Plan? The Plan does not contain adequate watershed analyses. The Plan fails to address cumulative impacts.

The Plan fails to address the issue of damage to lakes. Ultimately, the Forest Service hides behind (1) shared responsibility and (2) statements that lake protection is beyond the scope of the Plan.

Contention B-5. The Plan Does Not Reveal How The Watershed Analysis Will Be Used To Prevent Further Watershed Damage, Relying On "Professional Judgement."

The Plan should disclose to the Public the mechanism by which the watershed analysis will be used at project level activities. While "professional judgement" is a necessary component of making decisions, the agency should explain how it intends to use data collected through its watershed analysis to prevent watershed damage.

In an audit conducted by the Idaho Dept of Health and Welfare, Division of Environmental Quality, (April 1988), four of ten Forest Service projects reviewed in Idaho (including the Idaho Panhandle) were judged to have unacceptable levels of BMP implementation. According to this audit,

The Central cause of the implementation problem was the insufficient knowledge timber sale administrators had of the Forest Practices Act and their obligation to implement its rules to comply with the Clean Water Act. [Water Quality Bureau. Final Report: Forest Practices Water Quality Audit, 1988, at 2].

"Professional judgement" depends on knowledge of the resources, environmental consequences of actions taken, and environmental law.

The USFS's response is that it will meet its commitment to state water quality standards. Evidence argues to the contrary. In the Idaho Dept. of Health and Welfare audit, Forest Service personnel who plan and administer project level activities are unaware of those state standards and pertinent environmental law:

Four of ten federal projects were judged by the team to have an unacceptable level of BMP implementation. The main deficiency identified is that personnel who are responsible for planning and administering projects were often insufficiently aware of the State's role in administering nonpoint source sections of the Clean Water Act. They were often unaware that the rules and regulations of the Forest Practices Act are the BMPs which provide minimum standards for compliance with the Clean Water Act. Certain Forest Service specifications on some forests are less restrictive than the BMPs, yet federal specifications are applied by sale administrators in the belief that they meet or exceed the BMPs. Another implementation problem identified is the lack of a mechanism by which a variance to the BMPS can be granted to federal land managers. Although this is not an impediment to BMP compliance, an administrative remedy for this problem should be developed. [Water Quality Bureau. Final Report: Forest Practices Water Quality Audit, 1988 15-16].

With the tremendous amount of watershed damage that already exists, and the high ASQ and levels of road-building chosen by the Forest Service, "professional judgement" gives no solace to the Public that the Plan sanctions little more than business as usual: more roads, more clearcutting, more watershed damage.

Professional judgement is properly understood as a type of judgement that comes about when the experienced resource specialist gathers all current information related to the management concern and then compares it to the question at hand. The specialist then

bridges the gap between the diversely related studies and the issue in question with a construction of logically-based premises and personal experience. Problems arise during the review process when the exact logical premises and hunches used as building blocks are not specified. When the Plan states that certain management decisions were determined by a review of current literature and professional judgement, and says no more, then those decisions are effectively removed from scrutiny and debate. It is imperative that when professional judgement is employed the exact processes and assumptions should be clearly and unequivocally presented for review and study.

NEPA (42 U.S.C. Sec 4332(c)) requires that the environmental effects of the Plan must be addressed and disclosed. Any decision to adopt the Plan must demonstrate consideration of factually correct information, which must be understandably disclosed in the Record of Decision and its attendant documents. The Decision to adopt the Plan itself must also be based upon factually correct and clearly displayed information. The NEPA regulations require that an EIS display scientific integrity:

Methodology and scientific accuracy. Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

40 C.F.R. 1502.24. The scientific integrity requirement is particularly important in the key section on environmental consequences which "forms the scientific and analytical basis for comparisons" of alternatives. 40 C.F.R. 1502.16.

The Plan is not based on the scholarship and science required by NEPA. The watershed analysis is just one example of this. The documents that comprise the Plan would not withstand peer review by the scientific community. Instead, the Forest Service falls back on "professional judgement."

Contention C. LOGGING AND ROADING STREAMSIDES

In developing the implementing regulations for NFMA, the Committee of Scientists considered riparian areas to be "an extremely important fraction of the forest area." [Final Report of the Committee of Scientists, 44 Fed. Reg. (1979) at 26,626]. Planners must give "special attention" to riparian areas, strips of land "approximately 100 feet from the edges of all perennial streams, lakes, and other bodies of water." (36 C.F.R. Sec 219.27(e)). While the regulations do not specifically prohibit any activity in riparian areas, the Committee hoped to "assure intensive planning" and "provide further safeguards for protection of soil and water at the critical meeting zone of the two resources." (Final Report of the Committee of Scientists, 26,653]

A general reply to the Forest Service's response on the agency's riparian management scheme will be followed by point by point replies to the USFS responsive statement.

GENERAL REPLY: LOGGING AND ROADING STREAMSIDES

Preventing damage to streams will be less costly and will have greater Public benefits than trying to correct damage once it is done. Mitigation of impacts as defined by the IPNF only involves minimizing impacts or correcting an impact (after the degradation occurs) by repair or rehabilitation methods. Best management practices (BMPs) and Forest Plan standards and guidelines are specifically aimed at lessening or minimizing impacts, not avoiding impacts. NEPA regulations (40 CFR 1508.20(a)) define mitigation to include total avoidance of the impact by eliminating or limiting an unfavorable action.

BMPs by definition are purported to be the "best" mitigation practices available, along with state-of-the art techniques intended to protect water quality and riparian habitat. In reality, many BMPs are rather standardized methods developed for average conditions. Many are compromise practices that must be economically feasible or proven to be cost-effective before they are approved for use in the field.

The effectiveness of many BMPs is untested in severe soil stability or highly erosive situations. BMPs developed for "lowland" areas may not work for roads and timber sales that are planned for headwater areas with shallow soils and steep slopes. Quantitative predictions of BMP success on these more fragile sites will be difficult, and administrators will be forced to accept high failure rates. An ability to quantify the effectiveness of BMPs in all but a few limited research situations casts a strong shadow of doubt on the USFS's ability to assure that stream habitats and water quality will be maintained and enhanced.

It is common knowledge that BMP effectiveness in respect to sediment, slumping and erosion from road construction is highly variable and difficult to predict. Physical stability factors of road cuts on steep mountain slopes are often hidden from view until contracts are committed and construction is underway. Springs, impermeable layers of till or clay and rock formations often create instability that cannot be engineered away or mitigated by standard BMPs. One plugged culvert caused by inattentive maintenance or a "one in 20 year" storm event can divert millions of gallons of water over a roadway fill, resulting in sheet erosion, massive slumps and mudslides that commonly are deposited into first or second order streams. Total dependence on BMPs and riparian guideline to accomplish the "maintain or enhance" riparian goal is unrealistic, flawed and doomed to eventual failure.

The use of long timber management rotations to "maintain or enhance" riparian habitat and water quality is an illusion unless the rotation age approaches those found in Old Growth riparian stands, and true selective harvesting occurs. It is common in north Idaho's wet draws and streamside zones for both seral and climax tree species to survive to ages of 300, 400, 500 years or more. Loss of individual trees from a stand on these lengthy cycles are natural events that could be simulated by innovative timber prescriptions. Instead, the USFS offers 180-200 year riparian rotations that terminate by clearcutting large tracts of riparian habitat (and many acres of adjoining mountain sides).

That is not the way a new riparian stand begins naturally; such prescriptions may produce commercial timber by the most economic means but be doomed to failure in respect to water quality protection.

The USFS persists in timber management prescriptions for the Idaho Panhandle which are dominated by even-aged methods and clearcutting in the riparian zone in spite of the example shown by adjacent forests. The USFS in R-1, R-4, and R-6 (including the adjacent Colville which shares administration of the Kaniksu National Forest) has either removed the riparian habitat from the suitable timber land base or permitted only selective cutting methods. The Nezperce and Payette Forest Plans emphasize selective cutting over clearcutting; the Colville Plan almost totally restricts the riparian habitat to selective harvest methods. The Caribou and Salmon National Forest Plans totally remove the riparian zone from the suitable land base. The USFS's Plan for the Idaho Panhandle is almost unique in its persistence in using "traditional" even-aged, clearcutting prescriptions in riparian areas.

Undoubtedly the most negative riparian impact that can be foreseen in the IPNF forest plan is road construction. It is accepted that roads and stream crossing cannot be totally excluded from riparian habitats without almost total exclusion of commercial logging from the forest. Unfortunately there is no discernible difference in the planned density of roads in the IPNF riparian areas as compared with the adjacent timber-emphasis upland management areas. A Forest Plan statement that directs administrators to limit new riparian area roads to where "there are no reasonable alternatives" is meaningless in steep mountain terrain where there rarely are "reasonable alternatives."

The USFS's previous fishery biologist is on record stating that buffer strips (no cutting) remain the most viable option for riparian

zone management where fishery, wildlife and water quality objectives cannot be assured. Use of standardized BMPs and 180 year old rotations do not provide adequate assurance. According to this specialist, buffer strips are the preferred approach along larger streams where taller (older) trees are needed to reach and cross streambeds for LOM recruitment.

Although the Forest Plan Map does show riparian habitat as a system of interconnected corridors, the means to actually manage these corridors as an integrated system are not evident in the USFS plan for the IPNF. Multiple activities occurring in riparian zones over space and time will undermine the USFS's best intentions. One slip of a bulldozer will undo the best laid plans of the USFS, perhaps in an entire drainage.

The USFS will need to assess cumulative impacts of multiple activities occurring in a watershed. Yet, no methodology exists for measuring and factoring in cumulative impacts of multiple activities within one drainage system. Quantitative information on BMP effectiveness is scarce or nonexistent.

The USFS may have the best of intentions in respect to managing riparian habitats, but the Forest Plan and its very limited monitoring plan do not provide the NFMA required

assurance that these special areas and water quality will be truly "maintained or improved." if water quality and fish habitat protection are to be guaranteed over the long term, the strongest case can be made for unsuitable timber classification for most riparian habitats, with a flexible management prescription that permits timber cutting when and if needed for log recruitment, fisheries improvement or riparian-dependent wildlife habitat enhancement.

SPECIFIC REPLIES: LOGGING AND ROADING RIPARIAN ZONES

Contention C-1 THE USFS INADEQUATELY PROTECTS RIPARIAN ZONES

The USFS claims that logging riparian zones will "maintain or enhance" riparian dependent resources. As discussed above under the scientific integrity requirements of NEPA, the USFS must support its broad, sweeping claims with "explicit reference by footnote to the scientific and other sources relied upon for conclusion." (40 C.F.R. 1502.24).

The USFS response claims that "rotations are timber harvesting tools that may be used to meet overall riparian objectives." The agency further asserts that "the combination of these standards, guidelines, and monitoring should (emphasis added) protect watershed and riparian values."

Terms such as "may" and "should" do not meet stringent NFMA requirements that forest planning "shall [emphasis added] provide special attention to areas dominated by riparian vegetation" and the FEIS (at VI-36) claim that "timber cannot be harvested without enhancing or maintaining riparian dependent resources." The term "shall" as it appears in national legislation is a command. It does not allow for permissive application of theories that may or may not be correct. The burden is on the USFS to demonstrate that its Plan meets the federal legislation requirements. This burden has not been met.

The agency tries to reassure the Public that it will take into account existing riparian conditions "during project implementation of the prescription standards and guidelines." [At 32 of response]. The agency does not reveal the details of how it will "take into account" these existing conditions.

The Plan's riparian management scheme ignores existing conditions such as prior damage from clearcutting or road-building. When the Idaho Department of Fish and Game expressed concern about this, the USFS's response was based primarily on professional judgement:

Agree that the riparian analysis technique used in the Plan is an oversimplification, however I don't believe [emphasis added] the results would change appreciably if we were to include the site specific data on harvested acres and road encroachment. The results would still reflect that buffer strips are better

than 100 year rotations and 5% harvest levels are better than buffer strips." (See SOR Appendix E, page C-1).

The agency contradicts itself on the issue of whether it considered existing riparian conditions when developing the Plan. In the above response to the Idaho Dept. of Fish and Game site-specific data were not used. But in the USFS's response to appellants' SOR, "existing watershed conditions were considered in the development of the Forest Plan". [Response at 32].

Exhibit 7 addresses overall watershed conditions, but does not refer specifically to riparian conditions. The exhibit does not provide inventories of watershed conditions, analysis of these inventories, and application of this analysis to the overall planning process.

Exhibit 9 has nothing to do with existing riparian conditions. The exhibit is limited to a review of the sediment model by inspections of select drainages over sediment thresholds. Neither exhibit 7 nor exhibit 9 address the issue of whether the USFS considered existing riparian conditions in the Plan.

If the USFS chooses to defer its assessment of riparian zones to the project level, then it fails to address the cumulative impacts of past and future activities on riparian zones. Appellants argue in the SOR for the agency to look at the "big picture" of watersheds, a holistic view:

The riparian corridor needs to be managed as a unit or system of interconnected drainages. Section 2502.1 of the FSM states that "The stream environment and related National Forest System lands and resources shall be considered as a unit...". Standards for headwater streams should be as high, if not higher than their downstream counterparts because of cumulative effects potential, percentage of spawning sites, and higher elevation/runoff relationships." (SOR Appendix E, at 7)

Deferring riparian assessment to the project level misses the interconnectedness of watershed units.

The USFS has written its riparian management program without first completing inventories of existing riparian conditions, without providing scientific documentation supporting the agency's riparian scheme, and without disclosing the impacts of the Plan on riparian resources—all in violation of NEPA. In an attempt to correct this, the USFS argues that existing conditions will be assessed at the project level. This, also, is insufficient under NEPA.

The USFS does not give equitable treatment to water resources and timber resources. The USFS selects an ASQ of 280 mmbf for an overall forest plan. The USFS, however, postpones its "goals" for riparian zones to site-specific planning. The agency's failure to assess watershed management ultimately flaws the timber program since timber and

water resources are inextricably linked. In the final analysis, the best way to protect riparian resources is to prevent the damage from occurring. The USFS should remove riparian zones from the timber base.

Contention C-2 NO PROTECTION FOR HEADWATER STREAMS

The USFS claims in their C-2 response that "hard and fast rules cannot be made to cover all situations. At the Forest Plan level, there needs to be flexibility for on-the-ground situations."

The Forest Service has a history of "flexibility" in the Public's watersheds. The result for the Public watersheds of north Idaho is a massive and expanding road network with major water quality impacts. Maintaining agency "flexibility" in protecting water quality runs contrary to NFMA, which is restrictive. As discussed by Wilkinson and Anderson:

The controversy over the effects of timber harvesting on water quality provided a major impetus for adoption of the Church guidelines and the National Forest Management Act (NFMA). As a result, some of the NFMA's most prescriptive provisions concern water quality. The Act prohibits timber harvesting unless the Forest service can ensure that "soil, slope, or other watershed conditions will not be irreversibly damaged." (16 U.S.C. Sec 1604(g)(3)(E)(i)(1982)] More specifically, the agency must ensure that "protection is provided for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment, where harvests are likely to seriously and adversely affect water conditions or fish habitat.[16 U.S.C. Sec 1604 (g)(3)(E)(iii) (1982)] Furthermore, clearcutting is allowed only where "such cuts are carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, aesthetic resources." [16 U.S.C. Sec 1604 (g)(3)(F)(v)]

[64 Or. L. Rev. 1, 158 (1985) at 222,223]

Taken as a whole, NFMA requires the USFS to take strong measures to protect water quality and fisheries. The planning record for the Idaho Panhandle is replete with evidence of serious and worsening impacts to water quality and fish. The agency should take steps in the Forest Plan to protect water quality. The Forest Service's response on the issues of protecting headwater streams and of protecting riparian resources is inappropriate in the face of the history of the National Forest System, the legislative history of NFMA, and NFMA itself.

C-3 THE PLAN PROVIDES NO ASSURANCE THAT THE RIPARIAN PRESCRIPTION WILL MEET STATE AND FEDERAL WATER QUALITY STANDARDS, AND THAT THE PRESCRIPTIONS WILL SATISFY THE 80 % FRY EMERGENCE STANDARDS FOR FISHERY STREAMS.

The USFS claims that "riparian prescriptions were based on best available scientific knowledge" and "monitoring will check on the adequacy of the water quality and fishery standards." [Response at 32, 33].

Clearcutting streamsides (and logging in riparian zones generally) may be based on the "best available scientific knowledge," but this claim is not supported by enumerations of the scientific literature on riparian zones. The USFS's riparian scheme for the Idaho Panhandle would not likely withstand peer review by the scientific community.

The USFS attempts to assure the Public that logging streamsides is okay because "monitoring" will occur. This response raises several unanswered questions. (1) Assuming that monitoring occurs that is both sensitive and specific, monitoring will only show that damage has already occurred after it is too late--not unlike closing the barn door after the cattle are already out of the barn. How is the problem detected before damage is done? (2) Much of the damage to streams occurs during periods of peak flows--which are difficult to monitor. What protection will be provided for peak flows? (3) the cost for monitoring that is thorough and statistically significant will be high, and funding will be unlikely. Will funding be assured? (4) Since the Plan does not contain a monitoring Plan amendment anyway, how does the Public ever know whether the "best available scientific knowledge" was adequate to enhance or improve riparian dependent resources and meet fishery or water quality standards? Once the USFS completes a water quality monitoring amendment, how does the agency intend to provide Public review? These unanswered questions negate the effort by the USFS to assure the Public that damage will not occur to riparian zones.

Contention D. NO ASSURANCE IS GIVEN THAT FOREST FISHERIES WILL BE MAINTAINED AND IMPROVED TO MEET FEDERAL STANDARDS AND FOREST PLAN OBJECTIVES.

The implementing regulations of NFMA require that the USFS manage fish habitat to maintain viable populations of all existing native vertebrate species. 36 C.F.R. Sec. 219.19 (1984). A Forest Plan must ensure protection from timber harvesting that will "seriously and adversely affect water conditions or fish habitat." 16 U.S.C. Sec 1604(g)(3)(E)(iii)(1982) The NFMA water quality provisions, which are subsequent to and more specific than section 208 of the Clean Water Act of 1972, plainly supplement the Clean Water Act requirements for lands within the National Forest System.

The USFS asserts that the "Forest Plan Standards are designed to maintain the existing beneficial use of water." (Responsive Statement at 32]. The agency does not support this claim, failing to provide assurance to the Public. The modeling, procedures, and standards do not assure that forest fisheries will be maintained and improved, especially with increased fishing pressure.

One case example is the fate of the national class trout fishery of the St. Joe River. The USFS and other agencies are improving Public access along the river road. Meanwhile, an aggressive logging and roading program in the watersheds will likely damage and

destroy fish habitat. The USFS has extensively logged Quartz Creek, Gold Creek, Bruin Creek, Bird Creek, Tumbledown Creek, and other watersheds on the north side of the St. Joe. Meanwhile, Plum Creek Timber Company is liquidating its checkerboard forests on the south shore of the St. Joe River.

The USFS also fails to support the statistical reliability of the fishery data and model. In addition the agency fails to consider the problems of variability for use as an indicator of fry emergence and fishery conditions. The fishery model fails to include increasing amounts of fishing pressure and past damage to fish habitat. Fisheries are destroyed by (1) increased fishing pressure and (2) damaged fishery habitat. Road building and logging have extensively damaged fishery habitat on the IPNF, and fishery pressures are expected to increase. Yet the fishery model fails to reflect this reality.

The USFS implies that the responsibility for fisheries lies with other agencies:

The Forest Plan Standards are designed to maintain the existing fisheries beneficial use of water. Fishing pressure also has a large impact on the fisheries resource, however fishing regulations are under the jurisdiction of the State of Idaho. [Response at 33].

The USFS is entrusted with fisheries habitat, which is inextricably linked with fish populations. The linkage between habitat and fish populations requires close cooperation between fishermen, the Idaho Dept. of Fish and Game, the Idaho Dept. of Health of Welfare, the Washington Dept. of Wildlife, and other state and federal agencies that share responsibility for the Public's fisheries. The USFS should have fully disclosed the trade-offs to the fishery resources of north Idaho and eastern Washington in its planning documents, and developed alternatives with a full spectrum of fishery goals as the USFS did with timber goals.

The USFS response states that cutthroat egg survival methods were developed in 1985. This is two years prior to the completion of the final forest plan--sufficient time to readjust the agency's forest plan.

The USFS does not respond to the appellants' contention that over-wintering survival and rearing habitat should have been used as indicators in the fishery model to calculate fishery populations. While no mention of these indicators occurs in the model, the USFS does mention rearing habitat in the EIS:

. . . in many streams, rearing habitat appears to be a greater limiting factor than spawning habitat. [FEIS VI-42].

. . . [r]esearch indicates that sediment may reduce overwinter survival. [FEIS VI-28].

The USFS's response is inadequate, even when compared with the agency's concerns expressed in the FEIS.

The USFS failed to respond to the contention by appellants that the fishery model is statistically unreliable. Appellants have discussed elsewhere in this reply requirements under NEPA for scientific integrity. As noted in the Statement of Reasons:

Despite the indication that the IPNF might be using the best information available and a potentially useful fishery model, there is no assurance that forest fisheries will be maintained and improved to meet federal standards and Plan objectives. [Appeal #2130, appendix E, Page 9].

In sum, increasing public access is combining with ongoing damage of watersheds and fish habitat. The Forest Plan is silent on the combined effects of increased public pressure and habitat destruction. The Plan certainly does not assure the Public that the Forest Service will protect fisheries. Instead, the Plan simply passes the issue on to the ranger districts. The Public is left with a "Plan to do more planning, 11 a "shell game situation," and no assurance that the Forest Service will actually protect water quality and fish.

Contention E. THE SEDIMENT MODEL IS INADEQUATE

The USFS states that the agency's models were "based on the best available information." [Response at 34]. As this relates to sediment, however, the USFS developed a model that did not include bedload sediment. And yet "best available information" readily available through hydrologists and fisheries biologists would have underscored the importance of bedload in overall watershed health.

The USFS was itself aware of the problem with bedload. Bedload sediment was brought to the agency's attention by appellants:

From limited bedload sampling we have found that bedload represents 25 to 39 percent of the total sediment load in developed drainages and only 5 percent in undeveloped drainages. Thus by restricting our sampling to only suspended sediment we are underestimating total sediment by 61 to 75 percent in developed drainages. [Idaho Panhandle National Forests: Draft Water Quality Monitoring Program, Forest Plan Phase as submitted by USFS hydrology staff, Robert Embry, SOR Appendix E-1].

The USFS argues that appellants' concerns about models are beyond the scope of the forest plan, and these concerns will be addressed at the project level. The USFS, however, provides no assurance that analysis will take place at the project level (the "shell game" planning phenomenon). Furthermore, watersheds are ecologic units and poorly understood from the perspective of the USFS's individual projects. For further discussion of this issue, the USFS should refer back to issue #5 on cumulative effects.

Contention E-2. THE USFS SEDIMENT MODEL DOES NOT ACCOUNT FOR TIME AFTER AN ACTIVITY, AND THE USFS POSTPONES IMPORTANT ANALYSIS OUTSIDE THE FOREST PLAN

The USFS argues that its sedimentation coefficients were based on the best available research. Yet research information is clearly available on the relationship between amount of sediment delivered to streams and time following soil disturbing activity. Such information was even provided to the USFS by appellants in SOR Appendix E (F-1).

The USFS is willing to quantify sedimentation rates, but is unwilling to include landslides or mass failure hazards in the agency's sediment model. Instead, the agency chooses to defer this analysis to the project level where, again, no assurance is provided to the Public that this will ever be done.

Contention G. THE PLAN FAILS TO MEET STATE WATER QUALITY AND DRINKING WATER STANDARDS.

The USFS claims in their response that "the Forest Plan does meet State of Idaho Water Quality Standards." This is in direct contradiction to the letter written by Al E. Murrey (Director of the Idaho Water Quality Bureau), referenced in Appendix H, which specifically states that "the Panhandle Forest Plan is not in compliance with Idaho Water Quality Standards."

The USFS further claims that domestic watershed areas will be "treated as areas of special needs," yet the agency fails to detail the specifics of these treatments. It is not beyond the scope of forest planning and FSM requirements to provide forest-wide guidelines to protect drinking water sources. Indeed, the USFS's failure to provide such guidelines is an abrogation of the agency's responsibility.

Contention H. ENTERING UNSCHEDULED DRAINAGES

Appendix K in the SOR lists a series of resource activities planned for "unscheduled" IPNF drainages. This list differs from appendix G of the of the USFS Plan which lists only a "couple of potential sales" (USFS Response at 36] in the implementation schedule.

The USFS justification for further activities in already heavily impacted drainages remains unclear--other than the assumption that more logging and roading will result in a net benefit to damaged watersheds. The USFS admits that some of these unscheduled drainages "will require up to 30 years for potential recovery." (FEIS at VI-39] How does the USFS justify these proposed activities?

The USFS failed to answer our contention that the Plan does not contain numeric or qualitative criteria for justifying the agency's scheduling categories and determining stream recovery times.

Contention I. THE PLAN UNDERESTIMATES IMPACTS AND COSTS OF ROAD-BUILDING AND LOGGING ON WATER AND FISH RESOURCES.

The issue of "roads" is key to understanding the problems and opportunities facing water and fish resources in north Idaho. The USFS's analysis of its road network on the Idaho Panhandle is inadequate.

The agency has not yet provided an inventory of the existing road network (both maintained and unmaintained roads), and based its Plan on the on-the-ground condition of the inventoried road network. Landslides as exemplified by those at Bluff Creek on the St. Joe National Forest are not discussed. Culvert replacement and repair is not discussed. The multiple factors of road maintenance that impact on costs and the environment are not discussed.

Many of the new road miles under this Plan will be in roadless areas. These areas are relatively steeper and more remote. Maintenance costs of road networks expanded into areas now roadless will likely be proportionately higher. Yet no mention of this is made in the Plan. Adding new mileage to the road inventory should necessarily increase the amount of road maintenance performed annually. Without an increase in the road maintenance budget, current levels of maintenance dollars will have to be stretched further to accommodate these new roads. This approach guarantees that forest roads will continue to be a primary source of nonpoint pollution from National Forest lands.

The USFS failed to respond to the contention that road closures should only be used to justify additional activities in a watershed when the hydrologic regime of the road returns to normal (in 5-10 years). The agency relies heavily on road closures for watershed protection, yet provides no assurance to the Public that this will work (eg. scientific literature, case examples from the Idaho Panhandle supported by monitoring data, etc.).

Broad sweeping promises about protecting water quality through road closures is an inadequate response on a forest with tremendous watershed impacts from a massive road system.

The USFS failed to respond to the contention on page 18 (Appendix E, SOR) that the decision-making processes outlined in the Plan lack accountability and monitoring. The Plan should outline an iterative decision-making process, recognizing the problems and limits of relying on "professional judgement." By failing to respond, the USFS acknowledges this is a problem.

Contention J. ABSENCE OF INTERIM PROTECTION FOR CANDIDATE RIVERS FOR THE NATIONAL WILD AND SCENIC RIVERS SYSTEM.

The USFS responds to the contention that management prescriptions for candidate wild and scenic rivers should be made explicit by asserting that any effort to protect these rivers would be deferred to the project level. Again, the USFS fails to provide detailed planning in the Forest Plan, and defers another important issue.

Contention K. THE PLAN IS NOW INADEQUATE BECAUSE OF THE NEW STATE OF IDAHO WATER QUALITY REQUIREMENTS PERTAINING TO NON-POINT SOURCES OF POLLUTION.

During the planning period the issue of nonpoint sources of pollution was an issue of tremendous Public interest and involvement in Idaho. Nonpoint sources of pollution (such as sediment from roads and logging, grazing, and mineral activity which all occur on National Forest lands) was the focus of two gubernatorial vetoes, numerous Public and legislative hearings, and played a major role in Idaho's 1986 senatorial campaign.

The State of Idaho recently reached an agreement on nonpoint sources of water pollution in efforts to satisfy the requirements of the federal Clean Water Act. Under the recently completed agreement, the Public will participate in identifying stream segments of concern (SSOC). The designation of SSOC on National Forest land means that the Forest Service will have to conduct intensive monitoring of BMP implementation and effectiveness. The antidegradation agreement states that the federal land management agency shall monitor water quality on their own lands. In order for the Plan for the Idaho Panhandle National Forests to comply with the federal Clean Water Act, the Plan will need to be revised and the agency willing to make a firm commitment to the agreement and to monitoring SSOC. Failure to do so places the Forest Plan in violation of the federal Clean Water Act.

ISSUE 8. THE PLAN FAILS TO ADEQUATELY ASSESS THE IMPACT OF PAST, PRESENT, AND FUTURE MINERAL ACTIVITIES ON SURFACE RESOURCES.

Contention A. WITHDRAWAL OF LANDS FROM MINERAL ENTRY

The USFS asserts that it has complied with 36 CFR 219.12(f) and 40 CFR 1502.14 regarding withdrawal of lands from mineral entry or leasing by noting that lands designated "wilderness" are withdrawn. The USFS does not discuss withdrawal of nonwilderness lands such as lands along the shorelines of Lake Pend Oreille and Priest Lake. Even alternatives that designate higher percentages of roadless areas as wilderness do not assess options for mineral withdrawal on the 1.7 million acres of lands already roaded. There can be no debate that mining will have impact and now is the time to assess the impact forest-wide.

Contention B. CONSIDERING THE IMPACT OF FUTURE MINERAL DEVELOPMENT

The USFS maintains that it has complied with planning regulations which require the agency to consider mineral exploration and development when planning the future of renewable resources (36 C.F.R. 219.22).

In north Idaho there is already a tremendous amount of mining damage, toxic and heavy metal pollution, and logging-related watershed damage. Any comprehensive long range

planning effort should carefully consider the separate and cumulative impacts resulting from activities related to both renewable and nonrenewable resources.

The USFS offers Table 111-20 (FEIS 111-70) as evidence that it is taking into consideration the effects of potential mineral development. Yet this Table is entitled "IIPNF PREDICTED 5-YEAR MINERAL ACTIVITY" and the Forest Plan has a life expectancy of 10-15 years. The Plan is silent as to mineral development beyond the first 5 years.

The Plan is also silent about existing damage to renewable resources resulting from past mineral activities. No discussion is provided about the potential interaction of multiple activities, with resulting impacts on downstream human health and economies.

ISSUE 9. THE PLAN FAILS TO SET FORTH AN ADEQUATE MONITORING PROGRAM.

An internal working paper on management indicator species (MIS) and monitoring has recently been brought to public attention. The IPNF Plan, according to USFS reviewers, lacks any monitoring item to assess compliance with standards for snags. The "white paper" also notes that the IPNF plan relies on the Idaho Dept of Fish and Game (IDFG) to monitor pileated woodpeckers, but the IDFG doesn't monitor nongame populations. Similar concerns and problems were noted pertaining to Old Growth: no monitoring other than ties to IDFG monitoring.

ISSUE 10. THE PLAN INADEQUATELY ASSESSES OLD GROWTH.

The Plan's definition of Old Growth does not address elevation. Lower elevation Old Growth is biologically more productive than is higher elevation Old Growth. Lower elevation Old Growth areas are generally more accessible than higher areas, and have been more severely impacted by logging. The varied elevations of Old Growth are not interchangeable. The Plan's definition of Old Growth does not include criteria for elevations. The result is that the Plan does not ensure equitable distribution of Old Growth habitat and does not meet its responsibilities under 36 C.F.R. sec. 219.26.

Contention A. THE PLAN FAILS TO ADEQUATELY DISCUSS BIOLOGIC DIVERSITY AND THE INVENTORY OF OLD GROWTH FOREST IS INADEQUATE.

(1) INVENTORY

The Committee of Scientists placed heavy emphasis on inventories. The Committee of Scientists was developed with the help of the National Academy of Sciences and the Secretary of Agriculture to developing the implementing regulations for NFMA. These regulations require that in providing for diversity of plant and animal communities,

"inventories shall include quantitative data making possible the evaluation of diversity in terms of its prior and present condition." (36 C.F.R. Sec 219.26 (1984)) The Committee explained, "No plan is better than the resource inventory data that support it. Each forest plan should be based on sound, detailed inventories of soils, vegetation, water resources, wildlife, and the other resources to be managed." [Comm of Scientists Final Report, 44 Fed. Reg. 26,608 (1979)]

Land managers must know what the Public resources are before they make decisions. In the planning process, inventories are fundamental. The Panhandle Plan is disturbingly deficient in its inventory of many resources, including Old Growth.

The USFS's response to the appellants' contention of inadequate review, discussion and resolution of the old Growth issue (and genetic diversity) reveals nothing new or definitive. Presumably this minimal response has its basis in an FEIS and Forest Plan that is so disturbingly weak in dealing with the Old Growth issue that nothing could be added except to rehash a few references and generalizations.

The planning records clearly show (and the Forest service openly admits) the inadequate and cursory "old growth" inventory used in the Forest Plan development. A definition of "Old Growth" had not been developed during the planning process--in fact, such a definition is still in the development stage. Yet the Forest Service continues to log this increasingly scarce and important Public resource.

During the past year there have been additional old Growth developments and Forest direction that are not discussed or even referenced in the Responsive Statement. citizen involvement in area planning efforts on the Priest Lake Ranger District during the fall and winter of 1988-1989 convinced the new district ranger that the Old Growth issue needed careful review and better field information before several hundred acres of existing old Growth could be scheduled for logging. The ranger has agreed to a moratorium on cutting or development of extensive Old Growth stands pending more information and future Public involvement.

This district is currently leading the Idaho Panhandle in a cooperative old Growth inventory, with involvement of citizens and Region 1 wildlife, timber, and ecology specialists. one goal of this ongoing effort is to establish a forest-wide Old Growth definition and specific inventory criteria. Presumably the results of the work on this ranger district will provide direction, standards and guidelines for the remaining districts on the Panhandle National Forests, and possibly other forests in Region 1 of the USFS. This effort should be integrated into the entire Plan.

The Forest Service has made no Public commitment to extend the Priest Lake I s inventory effort to the other ranger districts. Current indications are that a forest-wide accurate Old Growth data base may not be available for 4-5 years or more.

Disturbing revelations on Old Growth inventory data from Region 6 during the past year add to our uneasiness about Old Growth management and protection on the Panhandle

National Forests--and all of Region 1. Clearly the preliminary Old Growth figures used in Region 6 Forest Plans were disturbingly overblown--that is, existing Old Growth acres are markedly less than first estimated by the USFS. Why should appellants believe the situation on the Panhandle National Forests is different? What if future inventories show only 150,000--200,000 acres of "real" Old Growth, instead of 273,000 acres in the Plan, and in the interim we have locked in several thousand acres of these irreplaceable trees into signed timber sale contracts?

(2) IMMINENT THREAT OF LOGGING

In spite of the candid acknowledgement that the USFS is attempting to "manage and preserve" a threatened, vital resource without basic inventory data, most of the Panhandle Forests' Old Growth remains in the timber base. Timber sales containing these remnant stands are under scrutiny and harvest preparation daily throughout the Idaho Panhandle. If timber planners admittedly cannot accurately define what Old Growth is, where it is located and how many acres exist, how can they be expected to preserve those sites and stands within existing and forthcoming timber sales? What assurances can be made that the Forest Plan Old Growth standards will be achieved?

It is impossible for any district administrator to guarantee compliance with Old Growth Standards 10b,c,e,f, and g, (FPk 11-29) with current data. If full compliance of all nine old Growth standards cannot be met under today's situation, the Forest must take affirmative action to ensure this dwindling resource is protected.

Table 111-16 in the FEIS at 111-62 indicates the importance of the "existing old growth" within the suitable and available timberlands of Management Areas 1,2,3,4, and 7. The USFS has assigned over two-thirds (69 percent) of the supposed Old Growth on the entire Panhandle National Forests to intensive timber management areas. Under current USFS direction, nothing prevents preparation and sale of Old Growth forest--even stands within riparian zones--except Public vigilance and threats of appeal or lawsuits. The success in deferring Old Growth logging near Priest Lake speaks well for the openness of one district ranger but cannot be considered a precedent for the entire Idaho Panhandle National Forests.

The Plan fails to set forth a transportation management plan as part of the overall forest plan that discloses impacts on Old Growth resources, and specifically address potential adverse impacts as required by 40 CFR 1502.16 which requires disclosure of all reasonable foreseeable significant adverse impacts.

Old Growth and snags lost to roads and firewood cutting and gathering should be compensated elsewhere in the Idaho Panhandle National Forests.

Because of the uncertainty surrounding the issue of logging Old Growth remnants, it appears reasonable and prudent that a moratorium on cutting Old Growth be implemented for the balance of Decade 1. Allowing these Old Growth acres to remain in the timber

base when there are so many unanswered questions to resolve and field data to gather is imprudent, and violates the spirit and intent of both NEPA and NFMA.

(3) QUALITY OF OLD GROWTH

Documentation in both the FEIS and Forest Plan displays a disturbing lack of sensitivity to the goal of preserving and protecting a truly representative, high quality remnant of north Idaho's Old Growth forest. The FEIS at 11-77 states that existing Old Growth stands (presumably that within the suitable timber base of Management Areas 1, 2, 3, 4, and 7) will "eventually be replaced" by "appropriate" unsuitable old Growth Forest

Plan item 10c at 11-29 states that "existing old growth classified as unsuitable for timber management will be given priority for selection."

Clearly the Plan's intent is to meet Old Growth and diversity standards with the least number of acres, with minimal concern for quality of habitat preserved. The most difficult objective to achieve (of the existing USFS Old Growth standards for the IPNF) will be locating high quality stands of 300 acres or larger. The USFS's open bias towards logging Old Growth in the highly productive, commercial timber management areas leaves little hope that anything other than small, scattered groves of noncommercial quality Old Growth will be saved.

Contention B. THE PLAN FAILS TO PROVIDE A REASONABLE RANGE OF ALTERNATIVES RELATED TO GENETIC DIVERSITY AND OLD GROWTH.

The USFS contends that the range of alternatives explored in the NEPA process fully displayed a range of Old Growth options, but does not respond to our assertion that a "no old growth harvest" alternative needs objective review and comparison with the other alternatives. If the Forest Service on the adjacent Colville National Forest and at least one other National Forest in Idaho can display (and in the case of the Salmon National Forest) select a full EIS alternative that removes the Old Growth from the timber base-- why not on the Panhandle National Forests? The lack of this alternative keeps the Public from seeing the true costs and benefits of such an option. The clear intent of NEPA has not been achieved.

Contention D. THE PLAN FAILS TO PROVIDE AN ADEQUATE MONITORING PROGRAM FOR OLD GROWTH AND BIOLOGIC DIVERSITY.

The USFS's fails to mention Old Growth stands or habitat in the Forest Monitoring Program.

The agency's proposal to monitor indicator wildlife species is a laudable objective, but seems a much more costly, involved and less accurate method of keeping track of the Panhandle's Old Growth. If the Forest Service wants to know what is happening to the Old Growth resource, then why plan to try to locate and inventory mobile, elusive and rare pileated woodpeckers? Why not just count and measure the well-rooted Old Growth

trees the birds use for nesting and feeding? Monitoring known, mapped Old Growth forest stands (once a valid forest-wide inventory is concluded) should be one of the easiest and least costly items with which to deal.

Old Growth forests do not exist merely to provide habitat for Old Growth dependent birds and other animals. These trees and the habitat they represent have significant biological, ecological, aesthetic, and social values just by existing. If--God forbid--the pileated woodpeckers, goshawks and pine marten all vanish, we still will want to preserve and maintain our old Growth trees. A monitoring plan that omits any direct mention of old Growth and totally ignores the need for constant and regular oversight of these valuable stands is unresponsive to the intent of NFMA.

Regarding the monitoring plan for the Panhandle National Forests:

(1) THE PLAN CONTAINS NO BASELINE INVENTORIES OF MANAGEMENT INDICATOR SPECIES FOR OLD GROWTH HABITAT TYPES.

Knowing the baseline numbers of each species used to indicate Old Growth habitat health is essential in gauging the subsequent impact of habitat change or loss.

Monitoring for change in the numbers of indicator species depends on knowing how many of each species exist before and after an impact. The plan contains no baseline data on management indicator species for Old Growth habitat.

(2) SNAG DEPENDENT WILDLIFE SUCH AS PILEATED WOODPECKERS ARE INADEQUATELY PROTECTED, AND THE PLAN THEREBY FAILS TO SATISFY ITS RESPONSIBILITY TO ENSURE BIODIVERSITY UNDER 36 C.F.R. sec. 219.26.

The Plan selects pileated woodpecker as an indicator species. The Plan discusses woodpeckers in Appendix X, entitled, "Snag and Woody debris Management Guidelines." Appendix 11 in Appendix X lists specific hard snag requirements for different woodpeckers. Yet the Plan fails to rigorously include these guidelines in the Plan and fails to explore the adequacy of these recommendations.

Pileated woodpeckers require habitat consisting of mature forest with large diameter snags. Pileated woodpeckers are not an Old Growth dependent species and ought not to be used to indicate Old Growth forest habitat. [See generally State of California, Department of Fish and Game. Appeal of California Department of Fish and Game, in the matter of Sequoia National Forest

Land and Resource Management Plan and Decision, of Feb 25, 1988].

The pileated woodpecker is probably the largest woodpecker found in North America with the presumed extinction of the ivory-billed woodpecker. Nowhere throughout their

range are the birds common, and they are becoming more rare. This woodpecker needs big snags and trees to support the large nesting cavities. Nests average 8 inches in diameter and two feet in depth. These large snags are often found in Old Growth habitat, prompting Forest Service Handbook 553 to state: "Optimum habitat for pileated woodpeckers is roughly synonymous with old-growth forest." (Thomas, J.W. ed. 1979. Wildlife Habitats in Managed Forests - The Blue Mountains of Oregon and Washington USDA- Forest Service Agricultural Handbook No. 553, Sept 1979] Handbook 553 recommends that at least 45 dead trees be available in good woodpecker territory.

One Forest Service researcher, J.W. Thomas, has prescribed for the Forest Service the quantities of "hard" snags which need to be retained in order to provide habitat for forest snag-dependent species. [Thomas, J.W. ed. Wildlife Habitats in Managed Forests-The Blue Mountains of Oregon and Washington USDA Forest Service. Agricultural Handbook No. 553, Sept, 1979. His conclusions assume that existing and resulting soft snags are also retained.

Raphael and White indicate that there is little interspecific competition between cavity nesting species. [Raphael, Martin G. and Marshall White, 1984. Use of Snags by Cavity-Nesting Birds in the Sierra Nevada. Wildlife Monograph #86, January, 1984.] Snag dependent species differ in their habitat requirements either in nest-snag size, height, timing (eg. season), host tree species, or other parameters. Different cavity nesting species utilize different snag diameters for nesting. Therefore, different management indicator species (MIS) would be needed to indicate the habitat conditions for different snag sizes. Use of only one species which has a very large size requirement is certainly not indicative of the general habitat type to which it has been applied.

The standards and guidelines for protecting snags and dependent wildlife should be liberal, based on existing scientific research. Once snag habitat is logged, it is virtually irreplaceable. Reynolds, et.al., state that in a 400-acre study site in Colorado, less than fifteen percent of snags had any cavities; however trees which had cavities usually had multiple openings numbering up to eighteen. (Characteristics of Snags and Trees Containing Cavities in a Colorado Conifer Forest. Rocky Mt. Forest Service Research Note RM-455]. Since many cavity nesting species are territorial, the authors cautioned that clumping of snags may reduce populations. "Extra" snags need to be retained to assure that adequate quantities will be usable by wildlife. This observation is well supported. Raphael and White (1984) observed three suitable snags for each snag actually used. Thomas (1979) observed fifteen unoccupied trees for each tree with a cavity. Bunnell and Allaye-Chan observed 7.6 and 78 inactive snags for each active snag in Old Growth forest and second growth forest, respectively. [Bunnell, Fred L. and Ann Allaye-Chan, 1984. Potential of Winter Range Reserves for Ungulates as Habitat for Cavity Nesting Birds. Proc. Symposium Fish and Wildlife Relationships in Old Growth forests, April 1982].

Ensuring biodiversity requires that the Plan should provide a larger number of snags in more diverse sizes and configurations. Regarding the habitat needs of the pileated woodpecker, the Plan should assess the habitat needs of this species, inventory habitat,

and then develop standards and alternatives which meet the Plan's responsibility to ensure biodiversity. Failure to ensure protection of snag dependent wildlife violates 36 C.F.R. sec. 219.26.

In summary, the current Old Growth controversy raging in Region 6 clearly indicates the depth of the Public sentiment and values. This issue will not evaporate with resolution of the Oregon/Washington Old Growth stands. Concern for Old Growth habitat in the interior West and the northern Rockies is growing rapidly. The USFS acknowledges that its Old Growth inventory is deficient, and agrees that more research, better definitions, and monitoring are necessary. Old Growth in north Idaho is clearly a rapidly dwindling resource of irreplaceable value; no one refutes this fact. In spite of the obvious contradictions, the agency continues to view old Growth largely as a source of high quality, commercial timber while ignoring the need to preserve the remnant stands until an unbiased, scientifically sound, land-based inventory is complete. Without this forest-wide inventory and a moratorium on Old Growth harvesting, the Forest Plan goals, objectives and standards remain weak and of marginal value.

ISSUE 11. THE PLAN INADEQUATELY ASSESSES PLANT PATHOGENS AND NOXIOUS WEEDS

Failure to fully disclose issues pertaining to plant pathogens, noxious weeds, and catastrophic fire will result in management by crisis. The Forest Service, however, maintains that the Plan contains "flexibility" to deal with catastrophic events, and the agency cites 36 C.F.R. 219.27(c)(2).

Diseases such as white pine blister rust have played a major role in the Forest Service's justifying past high levels of logging. Forest Service officials on the Idaho Panhandle are already aware of problems with root rot. Agency officials also discuss the impending problem of beetle bark epidemics moving over the Bitterroot Divide from Montana into the stands of second growth lodge pole pine in the St. Joe and

Coeur d'Alene National Forests. Region 1 of the Forest Service is already facing epidemics of beetle bark on the Kootenai National Forest, using this epidemic to justify high levels of logging.

The issue is not a question of "if" but of "when". The Forest Service is quite well aware of these problems and should have fully discussed them in the Forest Plan. One major purpose of USFS planning is to provide leadership and stewardship in taking stock of forest resources and past damage, in anticipating the future, and in protecting and enhancing Public forest resources. Failure to address the issues of plant pathogens, noxious weeds, and catastrophic wildfire violates the agency's full disclosure responsibilities under NEPA.

The Forest Plan at IV-10 proposes to monitoring for potential outbreaks of plant pathogens and noxious weeds every five years. The agency acknowledges that the

reliability and precision of monitoring are moderate. Yet the agency fails to provide any analysis as to whether this frequency is adequate.

The USFS acknowledges that the forests of the Idaho Panhandle are at high risk for insect and disease epidemics (ROD 15). Since the forests are of such extraordinary importance to the Public for many resources, and the risk for damage is high, planning documents should have included a full scholarly and scientific assessment of these problems for the Public. In 1984 when the regional forester's office reviewed the alternatives for the IPNF, concerns were raised about fire by one reviewer: "I can find no mention of how or if fire management was a consideration in the analysis or the alternative selection process." [IPNF Planning Document 2012, appended communication from Walter J. Tomascak dated May 2, 1984] Yet the Regional Forester provided no direction for IPNF planners to address the issue of fire. Failure to do so makes wise land use decisions for land managers difficult or impossible. Failure to provide this analysis violates NEPA and NFMA.

As a result of epidemics, stands will be more prone to wildfire. The Inland Northwest has a significant history of wildfire. In 1910 nearly 3 million acres of forest in north Idaho and western Montana burned in what the historical record refers to as the "111910 Fire". Evidence of this catastrophic wildfire is found in the brushfields of the St. Joe and Clearwater River drainages, and resulted in some of the younger stands of forest in the Coeur d'Alene River drainage. The 1910 Fire also captured the attention of the nation and led to federal legislation and to Forest Service policies on forest fires.

On August 11, 1967, the Sundance Fire began with a lightning strike near Priest Lake. The catastrophic wildfire that resulted burned over 50,000 acres. Results from the fire are still clearly evident in the Selkirk Range. Considering the Great 1910 Burn and Sundance, and given the ROD's acknowledging that stands are at high risk for insect and disease epidemics, the failure of Plan to assess epidemics and the resulting risks for fire violates NFMA and NEPA.

The USFS has some of the greatest fire fighting capabilities on earth. And yet the Plan fails to draw on expertise within the agency or in other agencies to assess the combined roles of insects, pathogens, and fire. Unless corrected the result will be management by crisis.

ISSUE 12. THE PLAN IS NOT BASED ON A REALISTIC BUDGET

The agency's response to contention B fails to answer "what part of each program is actually related to timber programs."

The Forest Service's overall response for contentions (A) and (B) are based on the assumption that it is entirely appropriate for the agency to develop a plan that, in all likelihood, will not be budgeted by Congress. We believe that the Forest Service should develop alternatives and select a preferred alternative that are based in budgetary reality.

Indeed, the USFS recognized this also when in 1980 the Regional Forester approved the criteria for selecting a preferred alternative for the IPNF: "The preferred alternative should be achievable within the 1981-2025 outlook for funding." [letter from Regional Forester Tom Coston to IPNF Supervisor, dated June 23, 1980. IPNF Planning Document 3203]

During the development of the Preferred Alternative, USFS planners expressed concerns about the huge budgetary increases necessary to implement the Plan. [See for example IPNF Planning Document 1756 in which the planning team discusses the problems of a 36 percent increase in budget and a 146 percent increase in hard money dollars over the 1980 budget.] In 1983 IPNF Forest Supervisor wrote to the Regional Forester about the unrealistic budgetary assumptions of the preferred alternative, "It is apparent that there is a considerable funding gap between the Preferred Alternative in our proposed forest plan analysis and our probable program." [IPNF Planning Document 31511 During the review of the draft plan at the regional office in 1984, concerns were expressed that "[p]rojections for a budget increase for the preferred alternative seems to be wishful thinking these days." Ultimately, the regional forester did not communicate to IPNF planners any concern or provide any direction pertaining to developing alternatives based on a realistic budget. [IPNF Planning Document 2012. Compare the regional forester's letter of June 7, 1984, with concerns raised by Walter Tomascak on May 23 as appended].

The Plan and range of alternatives, with their unrealistic budget assumptions, are invalid for three reasons:

(1) THE PLAN FAILS TO EXAMINE A REASONABLE RANGE OF ALTERNATIVES, VIOLATING NEPA AND ITS IMPLEMENTING REGULATIONS, 40 C.F.R. Sec 1502.

All the alternatives in the Plan require annual budgets that are higher than the average 1980-1983 expenditure level of \$20.3 million. (FEIS at 11-128) Many of the most cost inefficient acres are the most important acres for wildlife and fish, water quality, and recreation. These acres were pulled into the timber base in part by assuming unrealistically high budgets. The Plan's strategy is inconsistent with the USFS's historic mission and with developing a plan that leads to the greatest good for the greatest number for the long run (greatest net public benefits).

NEPA requires agencies to examine a reasonable range of alternatives in preparing an Environmental Impact Statement (EIS). 42 U.S.C. sec 4332(2)(C)(iii) and (E); 40 C.F.R. sec 1502.14; Methow Valley Citizens Council v. Regional Forester, 833 F.2d 810, 815 (9th Cir. 1987). Indeed, NEPA's implementing regulations (11CEQ regulations") describe the alternatives requirement as the "heart" of the EIS. 40 C.F.R. sec 1502.14.

As the Ninth Circuit has recently reiterated, "The range of alternatives considered must be sufficient to permit a reasoned choice." Methow Valley Citizens council v. Regional Forester, 833 F.2d 810, 815 (1987), citing Save Lake Washington v. Frank, 641 F.2d

1330, 1334 (9th Cir. 1981). Thus, while an agency need not attempt to consider the entire universe of alternatives, those that it considers must cover the full spectrum of options. Council on Environmental Quality, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, Question 1, 46 Fed. Reg. 18026, 18027 (1981); California v. Block, 690 F.2d 753, 767-68, (9th Cir. 1982) Massachusetts v. Clark, 594 F. Supp. 1373, 1379-81 (D. Mass. 1984); National Wildlife Federation V. Andrus, 440 F. Supp. 1245, 1354 (D.D.C. 1977). Further, the existence of an unexamined but viable alternative renders the adopted plan and EIS inadequate. Citizens for a Better Henderson v. Hodel, 768 F.2d 1051, 1057 (9th Cir. 1985).

In addition, the alternatives must describe a range of "reasonable courses of action." 40 C.F.R. sec 1508.25(b)(emphasis supplied). NEPA requires "consideration of reasonable alternatives 'as they exist and are likely to exist.'" National Wildlife Federation v. Morton, 393 F. Supp. 1286, 1297 (D.D.C. 1975), quoting Carolina Environmental Study Group v. United States, 510 F.2d 796, 801 (D.C.Cir. 1975). Implicit in the alternatives requirement is the premise that the options be capable of implementation; evaluation of infeasible alternatives would be a pointless exercise. See, e.g., Westside Property Owners v. Schlesinger, 415 F.Supp. 1298 (D.Ariz. 1976), aff Id 597 F.2d 1214 (9th Cir. 1979); City of Romulus v. County of Wayne, 392 F.Supp. 578 (E.D. Mich. 1975).

Implementation of the Plan--of any plan--depends critically on funding levels. Without any consideration of alternatives at lower and more realistic funding levels, the range of alternatives in the FEIS is unreasonably narrow, in violation of NEPA. The Forest Service must reevaluate its selection of Alternative 13 after considering a range of alternatives spanning a more realistic array of budget possibilities.

(2) THE PLAN FAILS TO REVEAL ADVERSE ENVIRONMENTAL EFFECTS OF THE PLAN, AS ACTUALLY IMPLEMENTED, VIOLATES NEPA AND ITS REGULATIONS, 40 C.F.R. Sec 1502.

Lacking money to implement the plan as written, federal officials will be implementing only parts of the plan or implementing the plan more slowly. The Forest Service's response acknowledges this on page 54, "Differences between the Plan's budget and the appropriated budget may result in rescheduling activities and cause annual outputs to vary." Given the history of National Forest budgeting, a high likelihood exists that water quality, wildlife and fish, and recreation programs will continue to suffer. NEPA requires that, "to the fullest extent possible," adverse environmental effects of major Federal actions must be disclosed in an environmental impact statement. 42 U.S.C. sec 4332(C); Methow Valley Citizens Council, 833 F.2d at 814. While it may be difficult for an agency to anticipate every environmental effect of a proposed action, the agency's predictions must be "reasonable." Sierra Club v. Army Corps of Engineers, 701 F.2d 1011 (2d Cir. 1983); Concerned Citizens on 1-190 V. Secretary of Transportation, 641 F.2d 1 (1st Cir. 1981). If the agency does not have sufficient information to enable it to assess the environmental effects of a proposed action, then the agency must disclose the gaps in its information, and assess the relevance of that information to the agency's conclusions. 40 C.F.R. sec 1502.22.

The Plan violated these basic principles of NEPA by committing to a course of action when critical information--the Idaho Panhandle's budget--was unknown, and without examining the environmental consequences of implementing the Plan with a budget substantially lower than the proposed level.

The Plan and EIS describe a particular mix of activities and environmental effects which will occur under the Plan. For example, the Plan provides that a certain level of timber will be cut from designated areas, that certain roads will be built, that logged areas will be reforested, that environmental effects of logging and roading will be monitored, that programs will be installed to protect fish and wildlife, and that recreation opportunities in the Forest will be enhanced. The FEIS, in turn, reviews the environmental effects of implementing the Plan. As the Plan acknowledges, monitoring and mitigation efforts (and, consequently, the accuracy of the FEIS predictions about the Plan's environmental effects) depend on funding.

But the Plan is premised on an unrealistic budget. Disparity between the Plan's budget and the actual budget -- and the dramatic inequality in the funding of particular items -- translates into different environmental impacts for the Plan than those described in the FEIS.

Although the Forest Service knew that it could not predict how much money would be appropriated, the agency knew that its budget was crucial to implementation of the Plan as depicted to the Public. The relevance of that unknown funding information could and should have been fully disclosed in the FEIS, 40 C.F.R. sec 1502.22, and the Forest Service should have done an analysis of the Plan's environmental effects, given a lower -- and more likely -- budget.

(3) THE FOREST SERVICE'S SELECTION OF ALTERNATIVE 13 CONSTITUTES ARBITRARY AND CAPRICIOUS AGENCY ACTION, VIOLATING THE ADMINISTRATIVE PROCEDURES ACT, 5 U.S.C. Sec 706(2)(A).

Federal agency action is arbitrary and capricious "if the agency has ... offered an explanation for its decision that runs counter to the evidence..." Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance, 463 U.S. 29, 43 (1983).

Budgets do not exist to carry out this forest plan. The Federal Government, an agency of which developed this Forest Plan, is deeply in debt.

The Chief of the Forest Service, Dale Robertson, recently acknowledged that the agency will face funding problems in the USFS's "The Friday Newsletter" (March 3, 1989). The Chief makes it very clear that funding problems for all forestry programs are significant problems:

the 1990 Reagan Administration budget version . . . calls for an eight percent appropriations cut from 1989, plus absorbing inflation hikes. It includes a three percent reduction in research and a 44 percent drop in [State and Private Forestry]. I noted that the budget authority for 1990 National Forest System line items is about 70 percent of the land management plan proposals.

In other words, the Administration's proposed level of funding is 30 percent short nationwide on all plans.

The Plan and ROD offer no explanation for the Forest Service's assumption that, beginning this year, Congress will annually award to the Forest Service sufficient funds to budget the Idaho Panhandle National Forest at levels higher than in the past. Yet the Plan contains no "contingency" plan, in the event the Plan, or any part of it, is underfunded.

In selecting Alternative 13, with the near certainty that it would not be funded at its proposed budget level, and the consequences of such underfunding, the USFS has "entirely failed to consider an important aspect of the problem," Motor Vehicle Manufacturers Ass'n, 463 U.S. at 43. Moreover, the Forest Service, in selecting an alternative whose budget bears no relation to its own experience with budget realities, has failed to "articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" Id. at 43, quoting Burlington Truck Lines v. United States, 371 U.S. 156, 168 (1962). Thus the USFS's selection of Alternative G-M, which rests on a premise which is improbable at best, was arbitrary and capricious.

The failure to develop a Plan for the Idaho Panhandle National Forest based on a realistic budget further flaws this government document. The USFS should withdraw the Plan and provide a Forest Plan that is consistent with the mission of the National Forests, environmentally sound, and affordable for the American taxpayer.

ISSUE 13. THE PLAN INADEQUATELY ADDRESSES THE OUTDOOR RECREATION RESOURCE.

Contention A-A.OVERALL RECREATION INVENTORIES ARE INADEQUATE

The Forest Service asserts that it has provided an adequate inventory of recreational use of the Idaho Panhandle National Forests.

The agency's analysis, however, is deficient in several critical aspects. It fails to address the cumulative impact of loss to the outdoor recreation resource from roading and logging programs on multiple ownerships. For example, trails in the Avery District on the checkerboard land are being severely impacted by Plum Creek Timber Company's liquidation. Similarly, fish and wildlife habitat damage resulting from roading and logging programs on all ownerships will reduce wildlife and fish populations. Increased

access will increase hunting and fishing pressures on areas with increasingly damaged habitat. The result will be reduced hunting and fishing success, and reduced or closed hunting and fishing seasons. The only real opportunity to protect these habitats and resulting recreation is on National Forest land. The Plan is, however, silent on these issues and therefore glaringly violates NEPA and NFMA. In addition, the Plan presents no monitoring program for assessing outdoor recreation, in violation of the monitoring requirements of NFMA.

The USFS response suggests that a travel management plan is done which complies with legal requirements. The record should be clear that despite the huge and growing road network on the Idaho Panhandle and all the problems and threats this poses to other resources, the Plan does NOT contain a travel management plan that tiers to the goals of the Forest Plan. Nor does the Public know how other resources (e.g., fish, wildlife, clean water, hunting, fishing) will be protected from a huge and expanding logging road network.

Contention C. TRAIL INVENTORIES ARE INADEQUATE

The Forest Service asserts that a trail inventory is contained in the Plan: "The forest trail inventory compiled by the Forest recreation staff identifies the trail resource and is an inventory of existing facilities, their condition and use." (p. 58) The agency provides "Exhibit 1811 as evidence.

Exhibit 18 consists of a sample trail inventory form. The completed forms were not part of the decision documents. The Plan is virtually silent on this important Public resource.

ISSUE 14. THE FOREST SERVICE FAILED TO WORK WITH OTHER AGENCIES AND TRIBES

The Forest Service asserts that it communicated with other agencies and tribes during the planning process. The Plan fails, however, to disclose to the Public how the Forest Service intends to resolve differences with other agencies and tribes. For example the Idaho Dept of Fish and Game, Idaho Dept. of Health and Welfare, U.S. Department of Interior, U.S. Environmental Protection Agency, and Upper Columbia United Tribes all raised serious concerns about water quality protection during the draft comment period. Yet the final plan provides even less water quality protection than does the draft plan (e.g., more aggressive entry into "deferred" drainages).

ISSUE 15. THE PLAN FAILS TO ADEQUATELY ADDRESS THE ISSUE OF A HUGE AND EXPANDING ROAD NETWORK

Hunting and fishing are a way of life in the Rocky Mountain Region. The forests of north Idaho support important sport fisheries and big game species, as well as threatened or endangered species such as woodland caribou, grizzly bear, and gray wolf. Under this

Plan, men and women who hunt and fish and the greater Public will lose priceless fish and wildlife resources in north Idaho.

A general response will be followed by responses to specific contentions.

THE PLAN DOES NOT INVENTORY ROADS, DISPLAY FUTURE ROADS, OR CONTAIN A TRAVEL MANAGEMENT PLAN

The Public's wildlife and fisheries are destroyed by (1) habitat damage and (2) excessive hunting and fishing pressures. Building roads into forests or allowing unrestricted vehicular access into a forest will destroy fisheries and wildlife by destroying habitat and by accessing habitat to vehicular traffic. The Plan does not contain an inventory of its existing road system. While the Plan does contain maps pertaining to transportation management (exhibit 24), the Plan fails to assess how the transportation management plan meets the goals of the overall Plan (e.g., wildlife, flora, water quality).

The Plan fails to include a transportation plan to deal with road closures that tiers to the goals of the Plan. Yet road closures are issues of volatile Public interest. While building a road into a forest may be controversial, that controversy pales in comparison to closing roads. If wildlife and their habitats are to be protected, and if the Forest Service cannot successfully close roads in wildlife habitats, then the Forest Service should not build the roads. The Plan does not display inventories of existing roads (maintained and unmaintained, with a combined network of about 10,000 miles of roads), does not display maps of proposed roads, and contains no Travel Management Plan.

1. The Plan violates Forest Service Regulations on roads and travel management

Current Forest Service directives covering the inventory and management of roads and trails require that "all . . . facilities that provide access and mobility" to the forest must be inventoried (Forest Service Manual (FSM) 7703.1). Finally, FSM 2431.36b makes it clear that "temporary" roads must be used "only for short-term non-recurrent purchaser use" and are to be closed to public use.

2. The Plan violates the National Forest Management Act (NFMA) as pertaining to roads and travel management

NFMA requirements direct the Forest Service to evaluate and revegetate those roads not added to the Transportation System:

Unless the necessity for a permanent road is set forth in the forest development road system plan, any road constructed with a timber contract or other permit or lease shall be designed with the goal of reestablishing vegetative cover on the roadway and areas where the vegetative cover has been disturbed by the construction of the road, within ten years after the termination of the contract, permit, or lease either through artificial or natural means. Such action shall be

taken unless it is later determined that the road is needed for use as part of the National Forest Transportation System. (16 USC sec 1608 (b)).

In sum, NFMA and Forest Service regulations require that (1) all travelways be inventoried, (2) all "temporary" roads be closed to public use, and (3) only those roads no longer usable and that have been returned to the production of trees, forage, or other vegetative resources may be dropped from the inventory. If these requirements are met, the inventory can be used to evaluate the effects associated with uses of all existing travelways.

Accurate road and trail inventories are also necessary for implementation of NFMA requirements that off-road vehicle use be regulated to minimize negative effects on natural resources (36 C.F.R. sec 219.21(g), sec 219.27(a)) and that the Forest Service maintain and improve habitat for indicator species of wildlife (36 C.F.R. sec 219.27(a)(6)). On the Idaho Panhandle National Forests these include elk, woodland caribou, moose, and grizzly bear, all of which are sensitive to the effects of roads.

3. The Plan violates the Endangered Species Act (ESA) by not providing road inventories, location of future roads, and a travel management plan

The ESA prohibits significant disruption of the feeding, breeding, and sheltering habits of threatened and endangered species. Disruption by public use of roads and trails may constitute a "taking" of the species.

Section 7 of the ESA also requires the best scientific and commercial information available be used in managing threatened and endangered species. The Plan must follow these requirements when evaluating the effects of roads and trails on threatened and endangered species such as woodland caribou and grizzly bear. A noted expert on grizzly bears, Dr. Charles Jonkel, has written to the supervisor of the Flathead National Forest in Montana that roads should be inventoried, closed where appropriate, and revegetated:

As you are well aware, there exists a large number of temporary roads or spur roads which have never been numbered, inventoried or mapped, but which remain open to ORV use and to other human traffic. To conserve the bear, each of these roads in . . . (occupied habitat) should be inventoried then be effectively closed (Zager and Jonkel 1983) To properly favor the bear, the most effective road closure is revegetation. If roads are closed but remain in existence, there is still a significant activity level due to hikers, ORVs, motorcycles, and the like. [Jonkel, C., 1987, letter of comment on the Flathead Forest Plan (2/15/87)]

4. The Plan violates the National Environmental Policy Act.

The requirements of NEPA control all planning of activities and programs on the National Forests. NEPA requires that the Forest Service evaluate the impacts of roads and trails not only at the individual project level, but cumulatively at the forest-wide level. A proper inventory is necessary where roads are being planned for a timber sale, and also

where roads and trails must be coordinated and assessed cumulatively with the Forest's Travel Plan, Transportation Plan, and Forest Plan.

Contention A. INFORMATION ON ROADS IS INADEQUATE

The Forest Service asserts that it will protect other resources in the face of a large and expanding road system. Standards will be used on a project by project basis.

The agency does not discuss the problems resulting from the existing massive road network, the risks of damage resulting from road failures (e.g. road failures at Bluff Creek in the Avery District), and the cumulative impact of logging roads and skid trails in north Idaho, irrespective of land ownership. Planning for this massive road system will require basic forest soil and slope inventories--which were not part of the Plan.

Contention B. THE USFS INAPPROPRIATELY POSTPONES IMPACTS AND COSTS OF ROAD NETWORKS

The USFS states that it has analyzed the environmental costs of road-building, giving as an example the following statement: "The cost per road mile is based on the percent side slope, mitigation costs on sensitive soils, and geologic factors." Yet at the time the ROD was signed, the soils inventory was still several years from being completed. Therefore it is not possible for the agency to determine the environmental costs of its road program under the Plan. Such costs are necessary to develop the budget the agency includes in the Plan, as required by 36 C.F.R. 219.12(g)(i).

The Forest Plan selects an ASQ of 280 MMBF which commits the Idaho Panhandle to continued high levels of road building. Since 54 MMBF will come from roadless areas, the agency will be building roads into areas more rugged and more fragile than areas already accessed.

The Plan contains an ASQ and overall strategy that commits the Public to high levels of road-building that cannot easily be reversed at the project level. Either the ASQ is deceptively inflated and in reality roads will not be built or the Public can expect continued high levels of road building with greater damage in areas now roadless. Simply deferring these overall decisions to the project level is inappropriate and violates the full disclosure requirements of NEPA.

The issue of the Forest Service failing to develop a realistic budget is covered at issue 12.

Contention C. ADVERSE IMPACTS ON WILDLIFE

The Forest Service's response suggest that it has a road closure program. Yet as discussed in contention D (below) no such program exists.

As noted previously, the Forest Service has no transportation management plan in place that tiers to the Forest Plan. It assumes that it can continue building roads and close some

existing roads. Yet this assumption has yet to be tested in the face of vocal opposition to road closures from some local inhabitants and reluctance by Forest Service officials. The Forest Service will continue expanding its massive road network on the Idaho Panhandle, and offers only the assumption of a road closure program that will work in order protect the internationally significant wildlife resources in north Idaho.

Until an effective travel management program is in place that tiers to the Plan, the Forest Service's promises to protect wildlife and other resources from the agency's road network are empty promises. USFS planners themselves have raised concerns about the ability of the agency to enforce a road closure program. For example, planners have raised concerns about the problems of road closure enforcement for wood cutting and the impact on elk. [IPNF Planning Document 1756]

Poaching is a major threat to the internationally significant wildlife resources on the Idaho Panhandle. An expanding road network will result in increased access, which will result in increased risks of poaching. Failure to provide this analysis violates the full disclosure requirements of NEPA. The Forest Service in exhibit #22 ("Modeling Elk Potential on the Kaniksu") states that the agency assumes habitat potential for elk will not go below 10 percent due to road densities. This assumption has not been field tested, and therefore not subject to peer review. NEPA requires scientific integrity. 40 C.F.R. 1502.24.

Contention D. ROAD CLOSURE AND REVEGATATION

The USFS wants to build more roads for logging. Logging roads, however, damage wildlife habitat. mitigating new and past damage will require the agency to close newly constructed roads as well as roads built in previous years. Road closures are extremely unpopular with the Public of the Inland Northwest. The result may be that the Forest Service builds new roads and fails to deliver on its promises to develop a transportation plan. Wildlife would be, once again, the big loser under the Forest Service.

If the agency is saying in the response to our SOR that it has met its legal requirements for a travel management plan by simply referring the Public to the ranger district level plans, then NEPA would require that these individual plans should have been part of the overall forest planning process. Otherwise, the Public never knows how the Forest Service will keep the broad, sweeping claims it makes about protecting wildlife.

If the agency is saying that it intends to defer transportation planning to the district level at some future time, then the Forest Service violates NEPA by failing to address the cumulative impact of variably determined and enforced road closure programs on wildlife resources.

ISSUE 16. THE PLAN PROPOSES AN UNPRECEDENTED LEAP IN THE ASQ FOR THE SECOND DECADE, BOOSTING THE ASQ FROM 280 MMBF TO 350 MMBF.

The USFS appears to be taking a position that the 350 MMBF is now only a projection, not a decision.

The forested watersheds of north Idaho have been damaged already by overcutting in the best tree growing sites, therefore the ASQ of 280 MMBF is unrealistic. The projected ASQ of 350 MMBF during the second decade is outrageous and insupportable.

The USFS inserted the 350 MMBF figure into the ROD after closing the comment period to the Public. This "projection" and its impact were never disclosed to the Public for review and comment during the period of Public comment. As such, the ROD violates the full disclosure requirements of NEPA.

Both the 280 MMBF and the 350 MMBF figures are disturbingly inflated and deceptive. Yet these inflated figures may be used incorrectly by timber corporate officials, community and political leaders, and federal budgetary planners to make irreversible commitments and decisions leading to economic hardship, environmental damage, appeals, lawsuits, and unnecessary divisiveness in the Inland Northwest. We can not have "business as usual" when the best stands are already logged and the bills for environmental damage are flooding in. We are in the midst of an historic transition, and this is nowhere reflected in this Plan.

ISSUE 17. THE PLAN INADEQUATELY ADDRESSES SOIL PRODUCTIVITY AND REFORESTATION FAILURES

The USFS maintains that the Plan's landtype mapping addresses the problem of glacial till soils and landforms.

As noted in the SOR, soils are a forest's most fundamental resource. The Plan was completed prior to the completion of landtyping for the Idaho Panhandle. The Forest Service includes areas in the timber base without knowing their soils and slopes. Without completing the inventory of landtypes prior to determining the timber base, areas are included in the timber base which carry high risks of reforestation failure and watershed damage. This flies in the face of reforestation and watershed requirements of NFMA, and violates the full disclosure responsibilities of NEPA. The consequence is that the timber base is illegally inflated, falsely justifying an inflated ASQ, which then misleads the Public.

The Forest Service provides as Exhibit 45 an article authored by Ferguson and Boyd on bracken ferns. (Bracken Fern Inhibition of Conifer Regeneration in Northern Idaho, Research Paper INT-389 Feb. 1988).

The issue is not bracken fern. The issue is umbric soils. Similar to two intersecting circles, a relationship does exist between umbric soils and bracken fern. Bracken ferns may or may not grow on umbric soils. Umbric soils may or may not support existing

bracken fern vegetative types. The issue is umbric soils do exist on the Idaho Panhandle: these soils carry a high risk of reforestation failure, the USFS did not inventory these areas, and umbric soils are included in the Plan's timber base in violation of NFMA and NEPA. The issue is not bracken fern.

ISSUES 3. 18. 19. 20. THE PLAN IS BASED ON A COMPUTER MODEL THAT DOES NOT REFLECT REALITY

See Exhibit 1. Randall O'Toole: Reply to Idaho Panhandle Responsive Statement. June 20, 1989

The USFS supported the forestry principle of nondeclining even flow during the legislative process that led to the National Forest Management Act. In 1976 the agency advised Congress that "nondeclining even-flow tends to support income flows and community stability, and minimizes chances of community disruption caused by significant reduction or acceleration in timber harvest." [Letter from John R. McGuire, Chief, S. 2296, 93d Cong., 1st Sess., 119 Cong. Rec. 26,797 (1973), reprinted in Senate Comm. on Agriculture, Nutrition, and Forestry, 96th Cong., 1st Sess., Compilation of the Forest And Rangeland Renewable Resources Act of 1974, at 20-24 (Comm. Print 1979).

The Plan for the Panhandle National Forests, however, runs entirely counter to the principle of nondeclining even flow. The Plan violates NFMA on this issue. More importantly, the long term impact on local communities could be devastating. The results of a single computer model which inaccurately reflects the reality on the three national forests comprising the Idaho Panhandle are environmental damage and agency decisions in violation of law.

The USFS's response to the appellants' concerns raised in the SOR pertaining to the appropriateness of combining the three proclaimed National Forests in a single FORPLAN model and single Plan merely repeats the justification given in the EIS documents.

The USFS argues in the responsive statement that no decision is being made beyond the first ten to fifteen years. "LTSY [long term sustained yield] is not exceeded in any proclaimed Forest in the first period for which the decision is made." [Response at 79]. Yet in the ROD the agency makes it clear that it "intends" to follow a course that will bring the agency in direct violation of nondeclining even flow requirements of NFMA:

I have decided to establish an average annual allowable sale quantity (ASQ) of 280 MMBF which can be sold in the first decade. I intend to increase the ASQ at the end of the ten-year plan period to the projected second decade timber harvest level. This will be an approximate increase of 70 MMBF per year to a new ASQ level of 350 MMBF per year. This increase will dependent [sic] on future market conditions. If, after ten years, the Forest Plan is not revised and if conditions dictate, I intend to allow for this increase. [ROD at 5]

In response to a Sept. 17, 1986 letter from Sen. McClure directing the Chief of the USFS to set specified levels of logging for the Panhandle National Forests, the Chief responds again that the Forest Service's intention is to increase the ASQ at the end of 10 years.

The USFS is sending the Public different messages. The agency is reassuring Sen. McClure and timber companies that it "intends" to increase the ASQ on the Panhandle National Forests to 350 MMBF in 10 years. Conversely in the responsive statement, the Forest Service is arguing that decisions for future decades are not being made.

Forests grow slowly from the perspective of human time frame. Sustainable use of our forests requires the long term view. The reality is that the first planning period cannot stand alone; it is inextricably linked and dependent upon the volumes, increases and decreases of all the subsequent decades in the ASQ schedule.

a. LEGAL REQUIREMENT: PLAN FOR EACH "PROCLAIMED" NATIONAL FOREST

The USFS may prepare a single forest plan for "all lands for which a Forest Supervisor has responsibility." 36 C.F.R. 219.4(b)(3). While on one hand the responsive statement argues that "the IPNF is one National Forest Administration Unit," nearly every Congressional law passed for the National Forest System pertains to individually "proclaimed" National Forests, not "administrative units" (see O'Toole, Exhibit 1 at 5). Moreover, failure to develop a Plan for each of the individually proclaimed National Forests of the Panhandle results in a Plan that overcuts north Idaho, in violation of Sec. 11 of NFMA.

Although Exhibit 46 is referenced in the Summary of Documentation, the information and national/regional direction in this exhibit is largely ignored. Exhibit 46 clearly describes a process and minimum informational requirements that must be made available to the Public in EIS documents when a proposed forest plan covers combined portions of two or more "proclaimed" National Forests.

b. LEGAL REQUIREMENT: NONDECLINING EVEN FLOW

The resulting Forest Plan (based on a computer model) must comply with NFMA and other environmental laws. The wisdom of developing separate computer models and separate plans for the St. Joe, Coeur d'Alene, and Kaniksu National Forests can be readily seen in the consequences of using a single model for all three: the one Plan for the Panhandle National Forests violates the principle of nondeclining even flow, and violates NFMA.

While the Forest Service keeps the overall Idaho Panhandle cut steadily increasing over time, the agency hides the widely fluctuating cuts on each of the individually proclaimed National Forests that comprise the Idaho Panhandle. one forest after another is overcut:

the cut goes up dramatically and then drops. This is graphically depicted in O'Toole's review on page 6, exhibit 1)

Remember that community industries and USFS administrative jobs depend on these logging levels. And remember also that the USFS defends its Plan on the basis of "community stability. 11 What happens when the ASQ on a single National Forest swings wildly? The Public might imagine that the Plan intends for wheels to be placed on timber mills and USFS offices, moving structures around north Idaho to follow the timber cut as it shifts from one National Forest to the next. Long term sustained yield will be violated with long term consequences for timber dependent communities.

The USFS argues that new data will come to light sometime in the future and allow the agency to justify what it is doing. Logging for wildlife, logging for water quality, logging for scenic beauty, and other "Multiple-Use" logging could allow the USFS to depart from the principle of Nondeclining Even Flow (NDEF) . The USFS fails, however, to show how road building and logging enhances "Multiple-Use" in the sweeping context sufficient to justify departure from nondeclining even flow.

The potential significance of the USFS's decision to violate nondeclining even flow cannot be understated. The importance emerges upon scrutiny of the future of the St. Joe, Coeur d'Alene, Kaniksu, and entire Panhandle Forests as envisioned by the USFS in the Panhandle Forest Plan. Again, the USFS may wish to refer to the graphic presentation of this material by O'Toole.

(i) KANIKSU NATIONAL FOREST

On the Kaniksu portion of the Panhandle National Forests, the Long Term Sustained Yield (LTSY) for the entire Kaniksu National Forest (742.8 MMCF/decade) is exceeded in decades 8 and 10 on the portion administered by the Panhandle, and also in decade 6 for the entire proclaimed forest. The Panhandle "overage" is quite significant, ranging from 35 percent in decade 10 to 50 percent in decade 8 (when utilizing the Panhandle's Kaniksu portion LTSY of 566.5). In these same two decades the LTSY is exceeded by 14 and 27 percent respectively by the combined planned ASQ of the Panhandle, Kootenai, and Colville National Forests.

Declines in the ASQ from one decade to the next occur in six decades out of thirteen for the Panhandle portion, and seven times for the entire Kaniksu National Forest. These are not minor declines; the drop from decade 8 to decade 9 on the Panhandle portion totals about 56 percent, or 475.2 MMBF. This is followed by an unrealistic jump of 101 percent in ASQ from decade 9 to 10.

(ii) COEUR D'ALENE NATIONAL FOREST

The proclaimed Coeur d'Alene Forest is totally administered as a component of the Panhandle National Forests. Any explanation of multiple planning impacts is without merit in respect to the ASQ planned for the overall Panhandle National Forests. The

Coeur d'Alene's LTSY (413.6 MMCF/decade) is exceeded in five decades out of 13. The percentage of excess ASQ ranges from 6 percent in decade 12; 13 percent in decade 7; 19 percent in decade 6; 20 percent in decade 13; and 50 percent in decade 9.

Declines in ASQ from one decade to the next occur four times; two of these are very major reductions of 62 and 67 percent (decades 7-8k, and 9-10). As described above for the Kaniksu National Forest, following these radical ASQ cuts the Plan shows huge upward jumps, with one of 175 percent.

(iii) ST. JOE NATIONAL FOREST

The St. Joe National Forest was treated in a similar manner by FORPLAN and forest planners. That portion of the St. Joe within the Panhandle National Forests has a LTSY of 290.1 MMCF/decade, and exceeds this in five decades out of thirteen. The largest excesses total 28 and 30 percent over LTSY.

The LTSY figure for the entire "proclaimed" St. Joe National Forest (administered through the Panhandle and Clearwater National Forest) is 453.8 MMCF/decade). LTSY for the St. Joe is exceeded four times out of thirteen, the largest overcut of 43 percent would occur in decade 5.

Declines in ASQ between decades is planned four times on the St. Joe, the greatest drop between decades 5 and 6 (71 percent). Again, there are numerous large jumps upward of ASQ between decades, ranging from 31 percent to as high as 144 percent (decades 6-7).

(iv) PANHANDLE NATIONAL FORESTS

The total LTSY for the administrative Panhandle National Forests (1270 MMCF/decade) is exceeded in three decades out of thirteen: decades 8, 10, 12. If the displayed LTSY of 1232 from Table IV-15 (FEIS IV-50) is the correct figure rather than 1270, then 62 percent (8 decades) of the ASQ levels for the Plan are in violation of LTSY principles. No explanation or justification is available in the FEIS or Responsive Statement to explain how or why this basic timber management precept is ignored.

The USFS also plans for declines in ASQ between decades 8-9, 10-11, 12-13 on the entire Panhandle Forests.

The USFS dismisses all of these future LTSY excesses and departures from nondeclining even flow by saying in the Responsive Statement, "[D]ecisions are made for the first planning period only." The reality is that the first planning period cannot stand alone; it is linked and dependent upon the volumes, increases and decreases of all the subsequent decades in the ASQ schedule.

Although the first decade ASQ volume was "hardwired" (determined as a result of RPA goals), and was not allowed to be generated by the linear program model to meet PNV and other modeling constraints, the outyear ASQ volumes and deviations are related. The

original intent of the nondeclining even flow direction was to develop a long term harvest schedule that did not decline from one decade to the next.

What the Forest Service has done for the Panhandle is to develop multi-decade timber programs, to display the results for timber companies and the broader Public as state-of-the-art representations of future timber programs, and then dismiss all of this in the responsive statement. At the same time, the Chief is assuring Sen. McClure that the agency "intends" to carry out the second decade leap.

If these outyear ASQ volumes are unconstrained by law, regulation, or agency policy in respect to LTSY or nondeclining even flow, then volumes for decades 2-13 should not be displayed, discussed, or dangled before the Public. Presenting such information is misleading and builds false expectations--especially for mill owners and their stockholders. Investments in new mills and mill automation could be made based on these data when, in reality, the timber doesn't exist or is unavailable for logging. (For example, Plum Creek Timber Company recently suggested that it might build a new mill in north Idaho or eastern Washington.) If such investments are made, the result might be increasing conflict over forest resources and accusations of Forest Service deception.

C. AGENCY DIRECTIVES ON MEETING THE INTENT OF SEC. 13, NFMA

NFMA Section clearly directs the USFS to calculate sustained yield (LTSY) for individually proclaimed National Forests (in this case, the St. Joe National Forest, the Coeur d'Alene National Forest, and the Kaniksu National Forest). Administratively combined units, such as the Idaho Panhandle National Forests, should not be used as the basis to calculate sustained yield. The problem of doing so is clearly demonstrated with the agency's Panhandle Forest Plan. The Chief Is letter of August 29, 1984, in the Forest Service exhibit 46 raises this concern because of anticipated Public challenges on this important issue.

The Chief's letter specifically lists three options "if the preferred alternative for the Forest Plan exceeds the sustained yield level on a proclaimed National Forest in any decade . . ." (emphasis added). These are: (1) reduce the level of logging, (2) have a departure approved, or (3) increase investments to maintain logging levels. The USFS's Plan for the Panhandle clearly and repeatedly violates the intent of NFMA Section 13 in respect to LTSY for the St. Joe, Coeur d'Alene, and Kaniksu National Forests, but none of the three options was discussed in the FEIS or selected for implementation.

Exhibit 46 clearly states, "If the analysis indicates that the sale volume exceeds the long term sustained yield capacity for a given decade or decades this schedule would be identified as a departure." (at 8) The exhibit goes on to state at 9, "In those situations where the planned sale volume for a given decade is less than the sale volume for the preceding decade, the sale volume must be either retained and identified as a departure of adjusted to provide for a nondeclining flow" (emphasis added). No departure approval was requested or approved for the Panhandle National Forests Plan. The USFS made no

adjustments in the ASQ to remove declines between decades. The direction in exhibit 46 applies not just to first decade but to later decades.

The USFS and the greater Public should be aware that the direction, analysis procedure, and disclosure process displayed in Exhibit 46 was available to the USFS in mid-1984. Forest Service officials subsequently reviewed the Plan in Washington, D.C. in 1985 before releasing the Plan as a draft for public comment in 1985. The concerns of the appellants about sustainable yields and departures were brought to the attention of the Forest Service as early as 1985. The USFS had two years to correct these problems before issuing the final plan in September, 1987. The agency simply ignored these problems. Although the raw data dealing with ASQ and LTSY are displayed in the FEIS as required by this national direction, the USFS at all levels chose to ignore the analysis and the required adjustments.

d. IMPACT ON TIMBER SUPPLY: CONCEPT OF "WORKING CIRCLES"

The USFS's response pertaining to the issue of using climax conditions does not focus on the issue we raised in the SOR: the Coeur d'Alene and St. Joe National Forests contain vast stands of lodge pole pine that the plan is not taking into account. The Plan covers the next 10-15 years of time, during which it is unlikely that the lodge pole pine will reach a climax state.

The USFS maintains that more detailed information on stratification and site productivity will be provided at the project level. But the USFS starts with an inflated ASQ and timber base, which pushes the timber and road building program forward onto sites ill-suited for long-term timber production. The district ranger is not likely to stand in the way of the Plan's high timber targets and resulting Congressional funding and political pressure.

The linkage between the first planning cycle and future planning cycles is essential to understand how the USFS inflated the timber base of the Idaho Panhandle.

Central to this is the USFS's inaccurate use of timber price trends. The USFS assumes that timber prices increase over time (relative to costs and other resource values). Timber price trends combined with culmination of mean annual increment (CMAI) result in delays in logging and increase the suitable timber base during the first decade. More simply, the USFS includes large areas in the suitable timber base because the agency has faith that in logging of low commercial value forests will become more valuable over time.

The refusal of the USFS to revise the economic components of the Plan before the Regional Forester signed the ROD in September, 1987, is unacceptable. As Randall O'Toole points out (Exhibit 1, p. 7), the USFS has done this for other National Forests. O'Toole concludes,

"If the Idaho Panhandle had followed the example of the Carson and Bridger-Teton, it might have avoided publishing a final plan that is based on completely

spurious data. As it is, the forest may have to follow the example of the Santa Fe, which was forced to completely revise its plan when its original final plan was found to be based on erroneous data."

ISSUE 21. THE PLAN FAILS TO ADEQUATELY ADDRESS AND PROTECT THE VISUAL RESOURCE.

Clearcutting and road-building are devastating the scenic beauty of the Northwest. Moreover, the Forest Service's clearcutting policies sparked the lawsuit on the Monongahela National Forest which, in turn, gave birth to the National Forest Management Act and forest planning. Despite this history and the Public's clear and growing opposition to clearcutting, the Idaho Panhandle Plan calls for clearcutting and road-building.

The Forest Service Manual requires that the visual resource be treated equally with other resources. (FSM 2380.3(3)) As with water, fish, wildlife, and outdoor recreation, the visual resource takes a back seat to road building and logging in the Plan.

The final Plan is an alternative, 13, which calls for damaging the visual resource in exchange for increased levels of logging. The USFS does not respond to the issue raised in the SOR that the agency used form letters to justify reductions in the visual resource.

The Forest Service strategy to damage the visual resource in order to meet timber targets in the Plan is significant, and should have been disclosed to the Public for comment. The agency's failure to disclose this planned damage to the visual beauty of north Idaho violates NFMA and NEPA.

Tremendous damage to the visual resource has already occurred in north Idaho. This damage is continuing to mount unabated on all ownerships. Forestland ownership under which the visual resource can be best protected is on National Forest land. Yet the Plan damages the visual beauty of the Idaho Panhandle. The cumulative damage of logging and road-building on all forestland owners past, present, and future would argue that north Idaho will not remain a place of beauty. Rather, north Idaho is being trashed and the Forest Service is partly responsible.

Exhibit 2 more fully discusses the deficiencies in the Plan's treatment of the visual resource. This exhibit provides the Forest Service with another summary of the requirements of planning for and protecting the visual resource, and how the Plan fails to meet these requirements.

Inventory of the visual condition is contingent upon future funding. The existing visual condition is listed as an additional data requirement that will be consistent with budget allocations. (FP, II-16 to II-17). The existing visual condition is also inventoried during project level investigations before project implementation. (USFS response, p. 84).

The Public should play an important role in making decisions about the Panhandle's visual resources. USFS Handbook 462 details the methodology for inventorying the visual resource. The emphasis here is on Public input. Yet the USFS did not consult the user Publics as envisioned in Handbook 462. Specifically, sensitivity levels were never identified or quantified. Sensitivity levels are an integral part of the inventory process; without measuring people's concerns, the output (VQOs) is unrealistic, perhaps meaningless because nobody (including the USFS) knows what the Public wants protected. The USFS similarly failed to consult the Public in any meaningful way when in 1986 it decided to reduce the visual resource. In 1986, the USFS combined the Modification VQO with the Maximum Modification VQO, departing from the VMS. The Visual Absorption Capacity was never employed, also in violation of USFS Handbook 462.

Plans should be based on present and anticipated uses. Yet the Panhandle Plan did not assess sensitivity levels and thus will be unable to anticipate what type of sensitivity levels (and hence VQOs) to anticipate.

ISSUE 22. THE PLAN INADEQUATELY DISCLOSES THE POTENTIAL OF PROTECTING RIVERS AS "WILD AND SCENIC RIVERS".

The Forest Service fails to respond to the NEPA arguments raised in the Statement of Reasons.

ISSUE 23. THE PLAN INADEQUATELY PROTECTS WILDLIFE.

Contention D. CHANGES BETWEEN DRAFT AND FINAL ON ROADS IN ELK SUMMER RANGE.

The USFS maintains that it does not want to self-impose a 20 year closure on roaded areas in order to provide security for wildlife. The agency argues that such closures are "too restrictive" because of "standards requiring periodic entry for multiple use management and protection of resources."

The Idaho Panhandle has a massive road network which threatens wildlife security. The Plan pushes roads further and further into areas critical for wildlife. Yet no transportation management plan is in place. And the agency, in its response on this issue, is not willing to commit itself to staying out of critical habitats once roaded. The Forest Service uses "Multiple-Use" as an argument to keep from protecting wildlife, one of the "Multiple-Uses" of the National Forests.

Contention E. ELK NUMBERS AND ELK HABITAT

The Forest Service maintains that it does not have to look at elk populations, only at elk habitat when assessing the adequacy of protecting the nationally significant elk resource on the Idaho Panhandle.

The Forest Service is the agency responsible for wildlife habitat. Wildlife populations are inextricably tied to these habitats. The size, diversity, and health of these wildlife populations directly reflect the health of the habitat. Failure to assess elk populations in addition to elk habitat risks an irretrievable commitment of elk habitat over large areas of north Idaho without adequate analysis and trade-offs ever being disclosed to sportsmen. The result will likely be an end to the world class hunting now found in north Idaho--and elk hunters will never know it until the resource is gone.

ISSUE 24. THE PLAN INADEQUATELY ADDRESSES THREATENED OR ENDANGERED SPECIES, INCLUDING CARIBOU, GRIZZLY BEAR, AND GRAY WOLF.

The USFS has failed to answer appellants request for relief pertaining to caribou. Appellants refer the agency to page 291-92 and Appendix D.

One issue of concern is the gray wolf. Appellants recognize that this is a controversial issue.

Nonetheless the gray wolf, like other threatened and endangered species, is inadequately discussed in the Plan in violation of the Endangered Species Act.

The USFS says that it will maintain a population of 25 grizzly bears under all alternatives. These alternatives contain different targets in road miles and other variables. As discussed above, the Plan contains no transportation management plan that tiers back to the goals of the Plan. The Plan fails to set forth a monitoring program for road closures. Meanwhile existing populations of grizzly bears are suffering serious mortality from poaching, also discussed above. The Forest Service fails to provide any scientific rationale for its position that 25 grizzly bears will be maintained under all alternatives.

Maps of habitat for threatened and endangered species are not provided to the Public in the Plan.

The Forest Service has failed to address cumulative effects for threatened and endangered species. For example, the cumulative effects model programs "will be used when they become available." (Forest Service response, at 97). Cumulative effects should be considered prior to making decisions about programs impacting habitat for threatened and endangered species. Otherwise the Forest Service may be negligent in meeting their legal responsibilities under the Endangered Species Act.

The Forest Service has not shown that its plans to close roads will actually work. Yet an effective road closure program is critical for the future of wildlife in north Idaho because

of the thousands of miles of existing and planned roads. A Forest Service researcher, J. L. Lyon, noted that vehicular traffic of forest roads evokes an avoidance response from elk, and argues for effective road closures. ["Road density models describing habitat effectiveness for Elk" Journal of Forestry Sept. 1983.] K. Hammer assessed the effectiveness of road closure programs on one district on the Flathead National Forest and found that 38 percent of road closures were ineffective in fully restricting passenger-type vehicles. ["An On Site Study of the Effectiveness of the USFS Road Closure Program in Management Situation 1 Grizzly Bear Habitat, Swan Lake Rang-ar Dist., Flathead National Forest, Montana" Nov. 1986.] Researchers Zager and Jonkel note that roads are detrimental to grizzly bears, and give specific recommendations for road construction. [Zager, P.E., and C.J. Jonkel. Managing Grizzly bear habitat in the Northern Rocky Mountains. Journal of Forestry, August, 1983.]

Road building and timber harvest are scheduled for grizzly bear habitat and there is clear potential for loss of bear habitat. This is in violation of 50 C.F.R. 17.40(b)(1)(i) which states

. . . no person shall take any grizzly bear in the 48 conterminous states of the United States.

"Take" is defined as follows:

ESA sec 3(18) The term "take" means to harass, harm . . . or attempt to engage in any such conduct.

"Harass" is further defined in the CFR regulations:

50 C.F.R. 17.3 "harass". In the definition of "take" in the Act means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.

Loss of grizzly bear habitat that results from road-building and logging will cause a "taking" of grizzly bear, in violation of the Endangered Species Act.

The Plan also fails to provide adequate protection for caribou. The Forest Service states that it will "enter" some caribou habitat every 20 years. (Appendix N). Yet the IPNF planning record 28, p. 35, referenced by the agency in their response, states:

Caribou habitat should be managed to simulate old-growth conditions. caribou habitat should be managed as old-growth or with an extended rotation age.

The Plan fails to disclose how the Forest Service intends to "manage" in order to "simulate" Old Growth forest types, or precisely which characteristics of Old Growth they are attempting to maintain to protect caribou.

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Reply to Idaho Panhandle Responsive Statement

Pages 15 through 18 and 76 through 82 of the Forest Service's responsive statement to the appeal of the Idaho Panhandle plan deals with economic issues covered in CHEC's review of that plan. This paper presents CHEC's reply to those issues.

Issue 3: Economics

A. Timber Price Trends

The responsive statement contends that a "sensitivity analysis" of the price trends used in the Idaho Panhandle FORPLAN model found "that updated prices and trends did not have a significant influence on changing land use outputs and effects from the original Forest Plan formulation" (p. 15). In fact, the opposite is true.

FORPLAN is a computer program that attempts to model the real world. The model succeeds if it behaves the way the real world behaves. The model fails if it behaves dramatically different from the real world. Price trends have a significant distortional effect on the FORPLAN model because they make it behave different from the way forest managers would normally work.

The Forest Service policy of sustained yield or nondeclining flow aims to produce relatively constant amounts of timber over time. As implemented by forest managers in the past, annual sale quantities would be calculated to be the greatest level that can possibly sustained over time. This is in accordance with the Multiple-Use Sustained-Yield Act of 1960 which defines sustained yield as "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of timber from the national forests (16 US C 531; italics added).

Another way of describing this calculation is that managers limit the suitable timber base to those lands that are needed to achieve and sustain the first decade timber sale level. Lands not needed to sustain that level have traditionally been excluded by the Forest Service from the timber base. This is in accordance with the forest planning rules, which specify that lands must be excluded from the suitable base if they "are not cost-efficient, over the planning horizon, in meeting forest objectives, which include timber production" (36 CFR 219.14(c)(3).

The rules define "objective" as "a concise, time-specific statement of measurable planned results that respond to pre-established goals" (36 CFR 219.3). Price trends are not a "planned result" that responds to a Forest Service goal; they are simply an effect of timber markets that are beyond the control of forest managers.

Price trends can cause the FORPLAN model to fail to model reality. When combined with predicted timber growth rates, they often project that net timber values per acre are increasing faster than 4 percent per year, i.e., faster than the discount rate. FORPLAN thus delays cutting timber until the timber values stop growing faster than 4 percent, which is usually by the fifth decade.

This delay in timber cutting leads FORPLAN to propose a low-level periodic output of timber in the first decade, which violates the Multiple-Use Sustained-Yield Act. Viewed another way, FORPLAN proposes a much larger suitable timber base than is needed to sustain the first decade timber sale level, which violates forest planning rules. This is because the increase in cutting rates after the first decade is not due to a forest objective but to the price trends.

Because of these problems, CHEC has always recommended that FORPLAN be run without price trends. At the forest planners discretion, price trends can be used to calculate present net values outside of FORPLAN, but they should not be allowed to influence the suitable timber base. Such influences fail to model the reality of forest management objectives as defined by the Multiple-Use Sustained-Yield Act and the forest planning rules. CHEC's recommendation has been followed by many forests in Region 3, 5, and elsewhere.

In response to CHEC's review of the draft Idaho Panhandle plan, the Forest Service did two sensitivity runs to determine the effects of price trends on FORPLAN. Neither run was made with no trends; instead, they were made with trends based on the 1985 RPA price trends rather than the 1980 RPA trends. Although the 1985 trends were only slightly lower than the 1980 trends, they demonstrate CHEC's contentions regarding the effects of trends on FORPLAN.

As noted in the final EIS, "when the original higher real price increases were included [in FORPLAN], PNV was increased by delaying harvest to a later decade. With the lower real price increases there is no incentive to delay harvest for PNV gains." Thus, "the maximum PNV [FORPLAN run] first decade harvest increased by 11 percent" when the lower price trends were used (FEIS p. H- 132). The run with lower trends also had a 14 percent lower fifth decade timber sales which led to a 14 percent smaller suitable timber base.

Meanwhile, the draft preferred alternative run cut 12 percent less in the fifth decade when lower trends were used, which also led to a 12 percent smaller suitable base (EIS p. 11133). The first decade harvest was controlled by a constraint, leaving it unchanged

from when the higher trends were used. But these runs clearly showed that the model was very sensitive to the price trends.

If no price trends were used, as recommended by CHEC, the differences in results would be even greater. Benchmark U, which maximized timber subject to nondeclining flow, proposed to cut almost exactly the same amount of timber in the fifth decade as the first (615 mmbf in the fifth vs. 614 mmbf in the first, as shown on p. B-96 of the DEIS). Given a timber base, the Idaho Panhandle is capable of producing a "high level" of timber sales in the first decade, that is, the same level as in the fifth decade. Given a first decade level of timber sales, the Panhandle's suitable timber base need not be larger than the number of acres needed to produce the same level in the fifth decade.

Thus, if no price trends were used, the fifth decade timber sale level could be the same as the first in any of the alternatives. The increases in timber sales in most of the alternatives are due solely to the price trends. In turn, the large suitable timber bases proposed by any of the alternatives reflects the high fifth decade sale level, not the low first decade sale level.

The selected alternative FORPLAN run constrained the model to produce at least 250 million board feet per year in the first decade. Due to the price trends, most unconstrained FORPLAN runs increased cutting levels by an unacceptably high percentage between the first and second decades. Planners responded to this by constraining FORPLAN "to provide gradual harvest increases" over the first 50 years, at a rate of about 50 million board feet per year (FEIS p. B- 15). The fifth decade rate was thus 450 million board feet.

These increases were not "objectives" as defined in the forest planning rules. Instead, their sole purpose was to "avoid sharp or dramatic increases in volume from decade to decade." These increases were due solely to the price trends. They should have been avoided by eliminating the price trends, not by building them into the model constraints.

The responsive statement points out that "planning horizon" is "the full 130 years analyzed, in contrast to the planning period of 10 to 15 years" (p. 17). This does not change the fact that the increases in timber sales are not due to forest "objectives" but instead to timber price trends.

The first decade timber sale level of 250 million board feet is only 56 percent of the fifth decade sale level of 450 million board feet. This means that a full 44 percent, or over 700,000 acres, of the suitable timber base is not needed to sustain the first decade timber sale level. Instead, it is included in the suitable base only because of the price trends and planners improper response to the effect of those trends on the model.

Because of the price trends, then, the Idaho Panhandle plan violates the Multiple-Use Sustained-Yield Act because it does not produce a high level of timber sales in the first decade. More importantly, it violates the forest planning rules because its suitable timber base is not cost-efficient. Instead, about 44 percent of that base is not needed to sustain the first decade timber sale level. Paying the costs - including, for example, fire

protection and silvicultural examination - needed to include those lands in the base is not needed.

Moreover, the inflated suitable timber base allows forest managers to be non-cost efficient because they can sell timber from areas that are less valuable than FORPLAN proposes. If, for example, managers sell timber from land in the first decade that FORPLAN proposes should be sold only in the fifth decade, the managers may spend far more accessing the timber than needed. Yet nothing in the plan requires managers to strictly follow FORPLAN's schedule.

Section 6(k) of the National Forest Management Act requires that land that is not economically suitable for timber management be withdrawn from the timber base. NFMA explicitly states that unsuitable lands are to be reviewed every ten years to see if conditions have changed that would make them suitable. Instead, the Idaho Panhandle plan includes in the suitable base all the lands that the Forest Service projects, based on speculatively high price trends, might be needed to increase timber sales in the next 50 years.

In allowing price trends to distort the FORPLAN model, planners have developed a forest plan that violates the Multiple-Use Sustained-Yield Act, section 6(k) of the National Forest Management Act, and section 219.14(c) of the forest planning rules.

B. Below-Cost Sales

B-1. Below-Cost Sales and the Suitable Base

The Forest Service admits that 223,360 acres of the selected suitable timber base will lose money if managed for timber at this time. But it claims that these acres are included in the base to "meet other resource benefits such as wildlife and visual quality." This reflects a profound misunderstanding of the FORPLAN model.

In fact, all of these acres are included in the base because of the price trends. These trends allow FORPLAN to project that these lands will make money in the future even though they lose money today.

Although FORPLAN does not propose to sell timber from these lands in the first decade, by including them in the base planners make the lands immediately available to timber cutting. Forest managers, who are not required to consult FORPLAN's cutting schedule, may propose sales on these 223,360 acres in the next few years.

This is an important reason why the suitable timber base is not cost-efficient. If the base included only those lands needed to sustain first decade sale levels and only those lands that produce the highest net benefits, then none of the below-cost lands would be included in the base.

B-2. Below-Cost Sales and Fair Market Value

The Forest Service says that below-cost sales do not violate NFMA's requirement that sales not be sold for less than market value because "market value is determined by the bidders on a sale," not by the costs of selling the timber. This ignores the Forest Service's own definition of "market value," which reads:

Market value as used by the Forest Service is timber appraisal is the price acceptable to a willing buyer and seller, both with knowledge of the relevant facts and not under compulsion to deal. This price is sometimes called fair market value. Appraised value and fair market value as used by the Forest Service mean the same. [FSM 2421.31

By only calculating whether the buyer would be willing to buy a sale, as the Forest Service's appraisal process does, the Forest Service ignores the most important part of the market value test: whether a seller would be willing to sell the timber. No willing seller would repeatedly sell a product for less than cost.

C. Community Stability

As with item B-1 above, claims that 160,047 acres of below-cost land in the suitable base were needed to protect community stability misunderstand or misrepresent the FORPLAN model. None of these acres were needed to sustain first decade timber sales. If increases in timber sales are needed after the first decade, such increases should be considered in a future revision to the forest plan.

D. Cost-Efficiency of the Suitable Base

The Forest Service says that allocation of management areas 19 and 20 to low intensity timber cutting increases "suitable acres in response to other concerns over the suitable timber base" (responsive statement, p. 17). Here, the responsive statement refers to p. 10 of the record of decision. That page does not state which "other concerns over the suitable timber base" led to this change. Instead, it simply states, "The areas which were changed to NLA, 19 and MA 20 because of the timber present [sic] do not add to first-decade harvests but do add to future potential harvest levels." Perhaps a line is missing from this statement.

This 35,000-acre area is a perfect example of areas in the suitable base that are not needed to sustain the first decade timber sale level. Neither the record of decision nor the EIS specifically state that these areas will not be cut in the first decade. If any sales are proposed in these areas, they will be definition be not cost-efficient because their costs would be higher than other first decade sales that had been planned by FORPLAN.

Page 9 of the record of decision suggests that the suitable timber base is larger than needed to sustain the first decade sale level in order to "retain the flexibility to expand timber volumes to meet potential increases in the next decade." This flexibility is already built into NFMA, which, as already noted, provides that unsuitable lands should be reexamined every ten years. By including these and other submarginal areas in the

suitable base today, the forest plan allows if not invites costly timber sales and wasteful management.

Issue 18: Stratification of Forest Sites

Forest planning rules require planners to stratify the forest "into categories of land with similar management costs and returns." The Idaho Panhandle stratified land using "habitat types," which are based on the climax forest of various areas. Yet some parts of one habitat type may be pure lodgepole pine stands while others may be cedar and hemlock forests, two forest types with very different management returns.

Since lodgepole pine is almost always an early successional species, and rarely a climax forest, little or none of the Idaho Panhandle forests were classified as lodgepole pine in the FORPLAN model. Instead, classifications were limited to "hemlock," "grand fir," "alpine fir unsuitable," and "all others." Most lodgepole pine was included in the hemlock habitat type.

The responsive statement says that "this does not mean that all the land in a class is assumed to be at that climax condition." Yet the FORPLAN timber prices for the hemlock habitat type reflected the high values of that forest type. Thus, the portions of this type that are currently stocked with lodgepole pine, whose value is much lower, were greatly overvalued in FORPLAN.

Issue 19: Three Forests in One FORPLAN Model

The Forest Service's policy on this issue is an interesting mixture of double-talk. On one hand, the responsive statement states that "the IPNF is one National Forest Administration Unit," even though every Congressional law ever passed that uses the term "National Forest" refers to "proclaimed forests," not administrative units.

On the other hand, the Forest Service, in other forest plans, admit that departures from nondeclining flow often take place when two forests are combined in the FORPLAN model. Although barely mentioned in appendix B of the forest plans, the Forest Service apparently believes that such departures are authorized by NFMA. However, that law only authorizes departures for the purposes of multiple-use and when consistent with multiple use.

The IPNF responsive statement admits that "base sale levels for [individual forests in] future decades will, at time, exceed the calculated LTSY [long-term sustained yield]." However, the responsive statement claims that this is justified by the fact that "no decision is made in the Forest Plan beyond ten to fifteen years" and LTSY is not exceeded in the first decade. Of course, the plan does decide to include in the suitable timber base about 700,000 acres of land that are not needed to sustain the first decade level of timber sales. But it is still true that the LTSY of any of the three forest is not exceeded by the first decade cutting level of those forests.

The responsive statements emphasis on LTSY is misplaced. The law reads limits "the sale of timber from each national forest to a quantity equal to or less than a quantity which can be removed from each forest annually on a sustained yield basis." Rather than mention sustained yield capacity, the law focuses on limiting sales in any given year to a level less than or equal to any future year.

The wild see-sawing of cutting rates calculated for the three forests by FORPLAN does not close to meeting this test (figure one). Moreover, projected future cutting levels on two different forests - the Coeur d'Alene and St. Joe - fall below the proposed first decade cutting rates for those forests. For example, the first decade cutting level of the portion of the St. Joe managed by the Idaho Panhandle is 154 million board feet, but in the sixth decade this falls to just 108 million board feet.

The Forest Service responsive statement claims that "there are no departures for the first decade for any of the three proclaimed forests" (p. 79). In fact, the EIS states that 205 million board feet per year will be cut from Coeur d'Alene in the first decade while only 204 will be cut in the tenth.

Although this is just a small departure, an even larger departure is possible on the St. Joe if the yield tables used by the Clearwater Forest are wrong. Unlike the Idaho Panhandle yield tables, which are much more realistic, the Clearwater yield tables project a huge increase in volume in second-growth stands over existing timber. This increase allows the Clearwater to project a cut in decade 6 that is nearly double that of the first decade. If this projection were based on Idaho Panhandle yield tables, the St. Joe Forest would have a large departure between the first and sixth decade.

In sum, the selected alternative departs from nondeclining flow on individual proclaimed units, both by allowing sale levels to greatly fluctuate from decade to decade and by allowing sales in future decades to fall below the first decade sale level.

Issue 20: Timber Prices and Trends

CHEC's reply to the discussion of price trends is mostly found above. In this section, the Forest Service claims that "it was impractical to incorporate new data and reanalyze all resource benchmarks and alternatives." In fact, many forests have done so when they found that their original data were wrong.

Some forests, such as the Okanogan, Shasta-Trinity, and Klamath, did the reanalysis after the first draft plan and incorporated it into a revised draft plan. Still others, such as the Bridger-Teton, Carson, Lincoln, and Gila, performed such reanalyses between their draft and final plans.

If the Idaho Panhandle had followed the example of the Carson and Bridger-Teton, it might have avoided publishing a final plan that is based on completely spurious data. As it is, the forest may have to follow the example of the Santa Fe, which was forced to

completely revise its plan when its original final plan was found to be based on erroneous data.